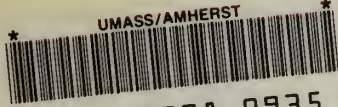


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Final Report

Alternatives to Incarceration for Substance Abusing Female Defendants/Offenders in Massachusetts 1996-1998

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Alternatives to Incarceration for Substance Abusing Female Defendants/Offenders in Massachusetts, 1996-1998

FINAL REPORT

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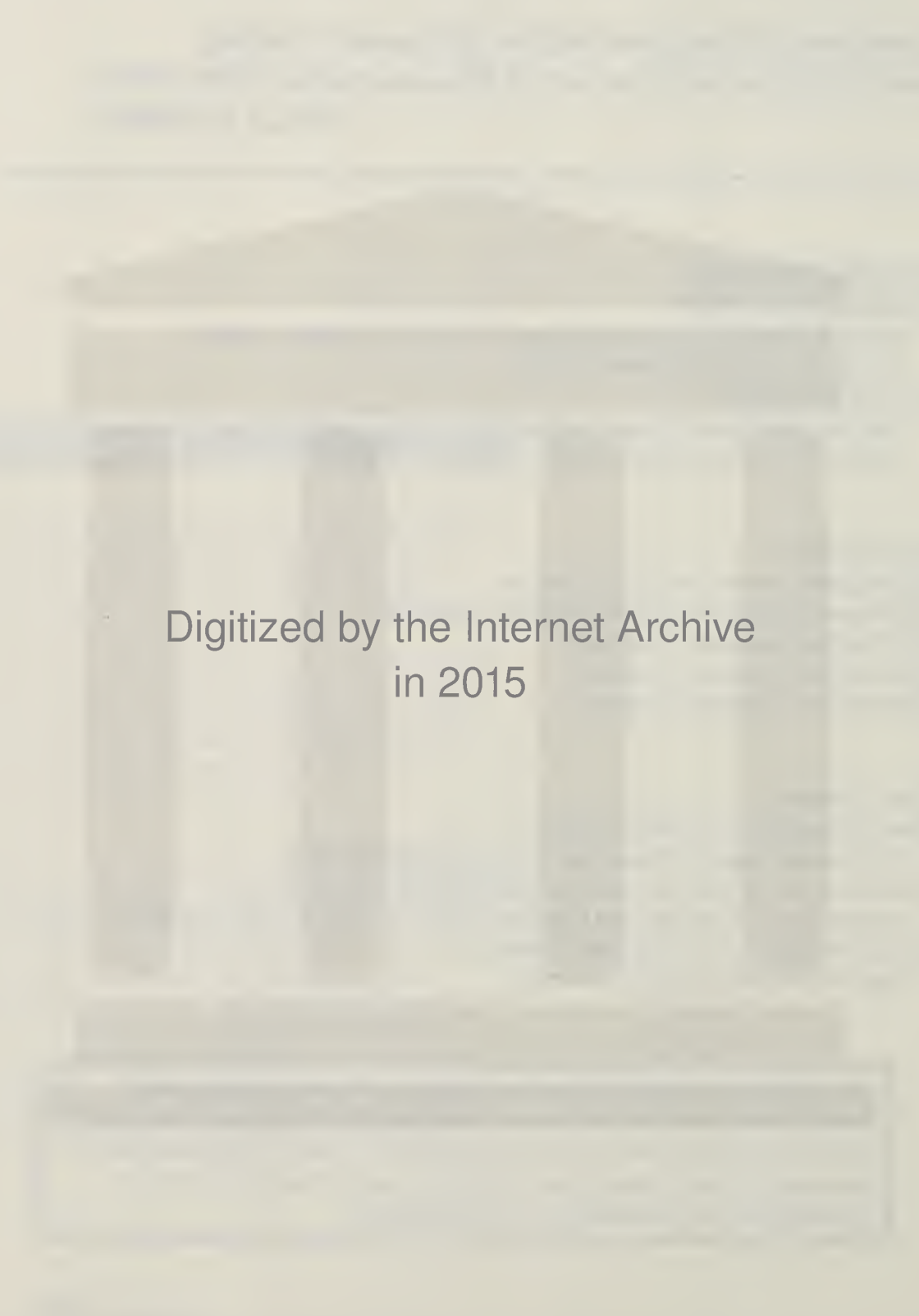
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March 2000



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**Alternatives to Incarceration for Substance Abusing Female
Defendants/Offenders in Massachusetts, 1996-1998: *FINAL REPORT***
By Carol Hardy-Fanta and Sylvia Mignon

Executive Summary

In July 1997, the Massachusetts State Legislature, recognizing the challenge presented by the problem of substance abuse for women in the criminal justice system, authorized funds to the Department of Public Health's Bureau of Substance Abuse Services for a study of substance using female offenders to be conducted by the McCormack Institute's Center for Women in Politics and Public Policy at the University of Massachusetts Boston. Since March 1998, a group of researchers at the Center for Women in Politics and Public Policy and the Criminal Justice Center at UMass Boston has gathered and analyzed a wealth of quantitative and qualitative information on women offenders in Massachusetts. This information includes data from the case files for a random sample of women arraigned in 1996 in two district courts in Greater Boston; interviews with court personnel from these two courts; interviews with a statewide sample of treatment providers; interviews with substance abusing female offenders in Greater Boston; and the Department of Public Health's Bureau of Substance Abuse Services admission and discharge statistics. It is important to keep in mind that the data from the probation case files were not limited to women who were "on probation" but included a sample drawn from all women arraigned in 1996. In addition, all data were gathered in Spring/Summer 1998 and capture the court response from 1996 thru 1998.

The following summarizes the results of our study and offers a series of recommendations for court personnel, treatment providers, and other policy makers concerned with the issues of women who are both substance abusers and who have entered (or who are at risk of entering) the Massachusetts criminal justice system.

We applaud the important ongoing efforts on the part of the Department of Public Health, the Office of the Commissioner of Probation, and the Supreme Judicial Court to address the impact of substance abuse on both the public health and criminal justice systems and hope that the findings of this study contribute to these efforts.

Key Findings

Defendant Profile

- Analysis of data from a random sample of 400 women defendants drawn from two district courts found an average age of almost 31 years; 85 percent of the women were not married at the time of the study; 60 percent were unemployed and 95 percent were declared indigent at the time of arraignment.

- The majority of women defendants were arraigned for offenses that were non-violent and relatively minor in seriousness according to the designations established by the Massachusetts Sentencing Guidelines.
- Almost six of every ten cases arraigned before the two courts in the random sample of 400 women had no prior convictions. Of those defendants with a prior conviction, 85 percent were for non-violent crimes.
- Of those defendants who were convicted (58.5 percent), 94 percent were sentenced to probation. Only 4.3 percent received an initial sentence that included incarceration.

Substance Abuse Identification and Impact on Case Disposition

- Defendant case files formally identified 36 percent of the women as substance abusers in contrast to court personnel who estimated the range to be from 66 to 90 percent of all women arraigned before the courts.
- Almost eight of every ten women who were identified as substance abusers and who were convicted had no prior convictions for drug offenses.
- Formal identification of a defendant as a substance abuser significantly increased the likelihood of conviction.
- Four out of every ten defendants with no substance abuse noted in their files had their cases dismissed in contrast to only one of every nine women defendants where substance abuse was formally noted in case file documents.
- Virtually all of the women who were incarcerated were identified in their official records as substance abusers. And, controlling for other factors, the odds of a convicted woman offender identified as a substance abuser being incarcerated as part of her initial sentence and/or final case outcome were significantly greater than those of an offender not identified as a substance abuser.

Treatment Availability and Utilization

- Treatment services for substance abusing women offenders are severely limited, especially for detoxification and inpatient services. Residential programs where children may remain with their mothers are greatly needed.
- Alternative sentences such as intensive supervision, house arrest, or electronic monitoring were utilized infrequently at the time of the study in 1998.

- The odds of being court ordered to treatment for convicted substance abusing women were significantly greater for women convicted of a drug crime than a property crime.
- Women involved in the criminal justice system who are admitted to DPH-funded programs were more likely to complete treatment than women who enter these programs from other avenues. On the other hand, they are less likely to receive medication for withdrawal, be referred to self-help groups, or receive referrals upon discharge.
- Data on the numbers of women defendants/offenders with children, the relationship of substance abuse and child care and neglect, and the impact of treatment modalities on the health and welfare of children are lacking in Massachusetts at the current time.

Recommendations

Many of the findings in this study support the work of other researchers and policymakers who are concerned about the problems of substance abusing women, especially when they confront the criminal justice system following arrest and arraignment. Other findings, such as the large independent and significant effect on conviction and incarceration rates of being identified as a substance abuser in the official record raise new issues to be examined. The implications of this study's findings need substantial thought when considering our recommendations. These include the following:

1. The Office of Probation is encouraged to continue its efforts to develop and implement systematic and uniform screening processes (including types of substance used) and to institute a treatment referral procedure system that does not create legal penalties (including more serious sentences) for women who are identified as substance abusers.
2. Improved coordination between the Department of Public Health's treatment service system and the criminal justice system is essential so that clear and uniform procedures assure that substance abuse screening and identification results in treatment rather than harsher sentences. This includes increased substance abuse training for judges, probation officers, and lawyers.
3. The Supreme Judicial Court of Massachusetts is encouraged to conduct a comprehensive review of how women arraigned before the courts are identified as substance abusers and to what extent this identification may influence case dispositions and sentencing outcomes.

4. Early identification (including a uniform screening process) should provide a clearer pathway to assessment and a linked response to treatment, intensive supervision within the courts, and a graduated system of criminal sanctions other than incarceration.
5. Treatment services need to be increased for female offenders so that delays in accessing programs – especially detoxification and inpatient services – do not precipitate further criminal activity and/or harsher sentences.
6. Treatment services need to be provided to women defendants/offenders who have substance abuse problems but who have not been charged with or convicted on drug-related offenses.
7. The Office of Probation should record at Intake what portion of women have children (not just dependents); what percentage of these are under 18; and what impact the arrest will have on the care of these children. A more systematic tracking of the number of children women have at the time of arrest and/or arraignment – and concerns women offenders have about their children – may have a major impact on the woman's ability to fulfill the terms of probation, receive/benefit from treatment, and avoid the costs of incarceration. Increased coordination between the Office of Probation and the Department of Social Services will facilitate these efforts. The impact of children on the treatment of substance using female offenders – and the impact of women's involvement in the criminal justice system on the lives of children – needs more research and assessment.
8. Further research is needed to determine the generalizability of these findings to other courts in the Commonwealth and to assess over time the impact of recent efforts including (a) substance abuse education and training for court personnel; (b) development of a drug testing protocol; (c) testing of a substance abuse screening tool; and (d) model policies to assist judges in implementing the Standards on Substance Abuse approved by the Supreme Judicial Court.

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Final Report: March 2000

Acknowledgments

This research study was a collaborative project between the John W. McCormack Institute of Public Affairs' Center for Women in Politics and Public Policy and the Criminal Justice Center at the University of Massachusetts Boston. The research was authorized by the Massachusetts State Legislature and funded through the Massachusetts Department of Public Health's Bureau of Substance Abuse Services. We would especially like to acknowledge Rep. Kay Khan, Rep. Barbara Gardner and Mayra Rodríguez-Howard, Director of the Bureau of Substance Abuse Services for their support of this project and their commitment to the issues of substance abusing women in the criminal justice system. We also would like to thank Teresa Anderson, Barbara Espy and Elsa Elliot of the Bureau of Substance Abuse Services for their support and assistance in data collection and analysis.

We thank the Office of the Commissioner of Probation for its willingness to support this research endeavor. A special thanks to Deputy Commissioner Ronald P. Corbett, Marjorie Browne, and Sandra Adams. Thanks to the Department of Correction for allowing us to interview women at MCI-Framingham and the treatment providers who participated in the interviews on treatment services for substance abusing women in Massachusetts. A special acknowledgment is due to the judges, chief probation officers, probation officers and other court personnel who kindly allowed us to interview them. (In the interests of confidentiality, we are not including their names or the names of the courts.) Thanks also to the court personnel who located the court files and provided us space to gather our data. A special thanks to the women defendants and offenders who graciously agreed to be interviewed about their experiences with substance abuse and the courts.

This report reflects a process where a draft was read by various members of the Supreme Judicial Court Standing Committee on Substance Abuse, the Office of the Commissioner of Probation, and the Bureau of Substance Abuse Services. Their questions and comments encouraged us to carefully reexamine the data and findings generated by the research. We have incorporated many of their suggestions into this, the *Final Report*, and gratefully acknowledge their contributions.

We would like to acknowledge the invaluable contributions of our research staff: Lisa Brabo, Carol Cardozo, Magdalana Grace Burke, Paige Ransford, and Mary Spooner for the innumerable hours spent on carefully collecting the large amounts of data needed for the study and on the skilled analysis needed for producing this report. We are grateful to Carol Cosenza and Mary Ellen Colten of the Center for Survey Research at the University of Massachusetts Boston for their expertise in helping us design the coding instruments, entering the data, and providing statistical consultation for our analysis. Thanks to Karla Armenoff for her excellent review of the literature and to Charles Poncho Brown who reviewed our procedures for protecting the rights of women participating in the study.

Finally, this project would not have been possible without the support of many individuals who served in an advisory capacity. While we were developing the study's research design we received excellent suggestions from Judges Sydney Hanlon and Robert Ziemian as well as Barbara Diamond of the Massachusetts Supreme Judicial Court Standing Committee on Substance Abuse. Our own Advisory Board provided hours of assistance in reviewing the data and in preparing this report. The generous time, effort, and expertise provided by Albert Cardarelli, Margaret Martin, and William Holmes were of incalculable value. Thank you.

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Introduction

In July 1997, the Massachusetts State Legislature, recognizing the challenge presented by the problem of substance abuse for women in the criminal justice system, authorized funds to the Department of Public Health's Bureau of Substance Abuse Services for a study of substance abusing female offenders to be conducted by the McCormack Institute's Center for Women in Politics and Public Policy at the University of Massachusetts Boston. Beginning in March 1998, a group of researchers at the Center for Women in Politics and Public Policy and the Criminal Justice Center at UMass Boston gathered and analyzed a wealth of quantitative and qualitative information on women, substance abuse, treatment, and the criminal justice system in Massachusetts. This report presents the findings from this study and offers a series of recommendations for court personnel, treatment providers, and other policy makers concerned with the issues of women who are both substance abusers and who have entered (or who are at risk of entering) the Massachusetts criminal justice system.

The relationship between substance abuse and crime is well documented in national studies and has received, in recent years, considerable attention in the media. In a 1997 study of twenty cities, for example, the rates of female arrestees who tested positive for any drug ranged from 42 percent to 83 percent.¹ Substance abuse among female inmates in particular has been found to be extremely high. In the 1997 Survey of Inmates in State and Federal Correctional Facilities by the Bureau of Justice Statistics, 84.0 percent of female State prisoners reported using drugs in the past and 73.6 percent used regularly – rates higher than those of male prisoners; 62.8 percent of female Federal prisoners reported using drugs in the past and 47.3 percent used regularly.² Even more significant is that large percentages of women inmates were under the influence of drugs when they committed their crime and/or committed the offense to buy drugs.³

Although women make up only a relatively small portion of inmates in federal, state and local institutions (5.8-7 percent),⁴ between 1985 and 1994 the number of women sentenced to state and federal facilities increased 313 percent compared to an increase of 225 percent for men.⁵ A 1999 national report by *The Sentencing Project*, a Washington-based criminal justice policy analysis group, states that, since 1980 “the number of women in prison has increased at nearly double the rate for men. There are now nearly seven times as many women in state and federal prisons as in 1980, an increase from 12,300 in 1980 to 82,800 by 1997, for a rise of 573%. An additional 63,000 women incarcerated in local jails yields a total of 146,600 inmates.”⁶ Finally, numerous national reports highlight the sharp rise in drug violation arrests for juvenile females, suggesting that the problem of substance abusing female offenders will only increase in the future.⁷

Since 1988, several reports issued by the Commonwealth of Massachusetts, including one by the Massachusetts State Legislature, conclude that the well-established link between substance abuse and crime found nationally is true in this state as well.⁸ A 1989 report by the Governor's Special Advisory Panel on Forensic Mental Health found that approximately 85 percent of women at MCI Framingham indicated involvement in substance abuse.⁹

A major recommendation of all these reports is to urge the creation of alternative sanctions other than incarceration for (non-violent) female offenders, including treatment for substance abuse. The Governor's Special Advisory Panel on Forensic Mental Health concluded: "The great social costs of substance abuse among women, particularly in relation to their involvement in the criminal justice system and to child-rearing are compelling reasons to devote more energy and resources to this difficult problem."¹⁰ Nationally and locally, there is a broad consensus that substance abuse treatment decreases recidivism rates and that the failure to provide treatment undermines the corrections system's ultimate goal of improving public safety.¹¹ Despite the fact that substance abuse has had a major impact on all components of the criminal justice system: police, courts, probation and corrections, there is, in most states, little formal coordination between the criminal justice and substance abuse treatment systems.¹²

Considerable efforts have been made in Massachusetts in recent years to address substance abuse issues within the courts and to increase coordination between the criminal justice system and the public health system. The Massachusetts Supreme Judicial Court, in 1995, adopted a system-wide policy to "enhance the judiciary's response to the impact of substance abuse on the courts of the Commonwealth."¹³ According to the *Standards on Substance Abuse* approved on April 28, 1998, judges "should attempt to identify and appropriately respond to the indication of substance abuse by any party appearing before him or her in a court of the Commonwealth, where substance abuse is a factor in behavior related to the case. At every stage of the adjudicatory process, courts should provide access to substance abuse information and to referrals for screening, assessment and treatment for substance abuse."¹⁴ Efforts to address substance abuse issues within the courts have included extensive education and training for court personnel; development of a drug testing protocol; testing of a substance abuse screening tool; and model policies to assist judges in implementing the Standards on Substance Abuse.

At the same time, it is important to provide a clear picture of how the courts determine who has a substance abuse problem and how substance abuse affects case disposition and treatment decisions. Without such a picture, it may be more difficult for judges and other court personnel to implement the Standards or assess their effectiveness. The study described in this report applauds the Massachusetts Department of Public Health, the Office of the Commissioner of Probation, the Department of Corrections, and the Supreme Judicial Court Standing Committee on Substance Abuse for their on-going efforts to address the impact of substance abuse on women in the criminal justice system and hopes that the findings presented here may contribute to these efforts.

Study Goals

The goals of this study were (1) to provide a demographic profile of women arraigned in two district courts including prior criminal history and nature of current offenses, and (2) to gain some understanding of the following issues:

- How serious a problem is substance abuse for women defendants and offenders in Massachusetts? What procedures do courts use to identify women with this problem – and how well do they work?
- What sentences/case dispositions do women offenders receive in the Massachusetts courts? What impact does being identified as a substance abuser have on initial sentence, case disposition, and final case outcome?
- To what extent are alternatives to incarceration utilized for women offenders with substance abuse problems?
- What are the predictors of offenders with substance abuse problems receiving treatment? What kinds of treatment are they receiving (especially in comparison to women in treatment who are not offenders)?
- Given the current state of knowledge at the national, state and local levels, what kinds of strategies are appropriate for dealing with substance abusing women within the courts and public health systems?

Research Methods

The findings presented here are based on our analysis of quantitative and qualitative data gathered from five sources: (1) A random sample of cases of women arraigned during 1996 in two district courts in Greater Boston and followed through June of 1998; (2) Court personnel interviews (including probation officers, judges, and staff members, including the director of a drug court); (3) Interviews with substance using offenders; (4) Telephone interviews with a state-wide stratified sample of treatment providers; and (5) Secondary analysis of 1996 admission and discharge data from the Bureau of Substance Abuse Services at the Department of Public Health. Details on how the data were gathered are provided in the Appendix.

It is important to keep several details in mind when interpreting the results of this study. First, although the case files of women arraigned in the two district courts were obtained from the Department of Probation, the cases are not limited to women “on probation.” The sample is drawn from all women who were arraigned in court following arrest.

Second, data were gathered from a total of 472 case files. They include a random sample of all female cases arraigned in the two courts in 1996 (N=400) as well as a scientifically

drawn oversample of women who were both convicted on the 1996 lead charge and were identified in case files as substance abusers (N=72). These samples provide a profile of a representative sample of 400 women *defendants* who came before the courts (using the cases in the random sample) and a subsample of 306 convicted women offenders (which included the 234 convicted women offenders from the random sample plus the 72 from the oversample; see table 5 in the Appendix). The study analyzes, therefore, data on women *defendants* (who may or may not have been convicted of the offense on which they were arraigned) and *offenders* (who were convicted of the offense). The sample size is, from a methodological standpoint, quite adequate for an exploratory study such as this. Because it is a scientifically drawn stratified random sample, the differences between groups (women identified as substance abusers compared to those not identified) have a statistical probability of falling within the 95th percent confidence interval (and in many cases, within the 99th percent confidence interval).^{*} Thus, while hypothesis testing studies generally employ larger data sets, this was an exploratory study with a sample size sufficiently large to begin the process of hypothesis development and to provide direction for future research.

Third, details of the case activity, initial sentence, final case outcome and treatment for each of the cases in the two samples (*representative* and *convicted offenders*) were tracked from the date of arraignment in 1996 through June 1998. We selected 1996 as the study year because it was the most recent year that would allow us to track, for the majority of cases, case activity, initial sentence, and final outcome at the time of data collection in June 1998.

Fourth, case file data, court personnel interviews, and interviews with female offenders were conducted within the greater Boston area. Interviews with treatment providers and the analysis of MIS data include data gathered for the entire state of Massachusetts. The *qualitative* component of the study was intended to provide information from a cross-section of court personnel, treatment providers, and female offenders. Interviewees were selected using stratified random sampling methods and included court personnel, treatment providers (stratified by treatment modality and geographical area); and offenders (incarcerated and non-incarcerated). We make no claim, of course, that the findings based on the relatively small number of interviews are generalizable to other courts in Massachusetts. This study is exploratory in nature and the experiences described in the qualitative interviews do provide some insight into the experiences of key participants in the criminal justice and public health systems.

* The use of a sample of 200 cases from each court (N=400) provides: (1) a statistical power of .90 (this is the probability of obtaining a significant result – .70 to .85 is considered acceptable for causal studies); (2) a critical effect size of .25 (that is the minimal difference necessary in the data to be detected); and (3) a significance level of .05 for a two-tailed test (the general standard in social science research). Using the entire 400 case data set, as we did, sample analysis would permit a statistical power of .95 with a critical effect size of .20.

Major Findings

This section provides a summary of the major findings including: (1) A profile of women defendants; (2) Procedures and rates of substance abuse identification; (3) Impact of substance abuse on initial sentence, case disposition, and final case outcome; (4) Use of alternatives to incarceration for convicted female offenders; (5) Predictors of treatment; and (6) Recommendations.

Profile of Women Defendants

To construct the profile of women defendants, we generated a random sample of 400 cases drawn from two district courts in the Greater Boston area; the random sample included 200 cases from each court.

Demographic characteristics

The mean age of female defendants at date of arraignment was 30.7 years (see Table 1). Almost all (84.9 percent) were single. The racial/ethnic breakdown was as follows: 41.6 percent white, 45.2 percent black/African American, 12.7 percent Hispanic/Latino, and 0.6 percent “other.” Over half (59 percent) were unemployed; virtually all (94.8 percent) were declared indigent at the time of arraignment.¹⁵ These characteristics correspond to findings from national surveys of adult offenders.¹⁶

Of the 400 women in the random sample, 306 cases (76.5 percent) had information recorded on the number of dependents; 202 of these cases (66 percent) indicated they had dependents. The mean number of dependents was 2.4 (range, 1-9). Of the 202 with dependents, 95 (47.0 percent) said they lived with their children. The fact that case files do not record the number of *children*, as opposed to “dependents,” and the complex role of children in the lives of female offenders with substance abuse problems will be discussed later in this report. Similar demographic results were found in our interviews with female offenders: the mean age was 37 years; 43.8 percent were white, 31.3 percent were black/African American; and 25 percent were Hispanic/Latina.¹⁷

Criminal History

One of the factors court personnel typically consider in sentencing an individual charged with a crime is his or her criminal history, in other words, whether s/he has a prior record and the nature of that record.¹⁸ We found that, for women in our random sample of court cases, over half (57.3 percent) had no prior convictions. Another 19.3 percent had only a minor record, i.e., fewer than six misdemeanors, no felonies, and no violent crimes that led to a conviction.

Of those with a prior conviction, the vast majority (75.9 percent) was for non-violent crimes and almost two-thirds (61.2 percent) were for misdemeanors rather than felonies. We classified all crimes using the Massachusetts Sentencing Guidelines where level 1 is the least serious and level 9 the most serious.¹⁹ The seriousness of prior convictions for the 175 women with prior records was relatively low according to these Guidelines: almost three-quarters (74.0 percent) were at levels 1-3 (of a possible 9). One quarter had a moderate to serious record (levels 4-9 or more than five misdemeanors and one or more felonies).²⁰ Of those with prior records, the most serious crimes leading to a conviction were as follows: 15.3 percent drug crimes; 24.1 percent crimes against a person; 31.8 percent property crimes; and 28.8 percent “other” crimes.²¹

Table 1
Profile of Female Defendants

Characteristic		N	Percent
<i>Demographic</i> ²²			
Age (N=400)		Mean = 30.7 yrs.	
Race/Ethnicity (N=361)			
White		150	41.6
Black		163	45.2
Hispanic/Latina		46	12.7
Other		2	0.6
Single/never married (N=344)		292	84.9
Unemployed (N=317)		188	59.3
Indigent (N=233)		198	94.8
Has dependents (N=306)		202	66.0
Living with children (N=202)		98	47.0
<i>(of those with dependents)</i>			
<i>Criminal History</i>			
No prior conviction (N=400)		230	57.5
Minor record (N=400)		77	19.3
<i>Offense characteristics of most serious charge prior to 1996 of those with prior convictions</i>	Non-violent crime	129	75.9
	Misdemeanor	104	61.2
	Low severity*	125	74.0
	Drug crime	26	15.3
	Person crime	41	24.1
	Property crime	54	31.8
<i>(N=170)</i>			
<i>1996 Lead Charge</i> (N=400)			
Convicted		234	58.5
<i>Offense characteristics of lead charge</i>	Non-violent crime	305	76.3
	Misdemeanor	262	65.5
	Low severity*	334	83.5
	Drug crime	55	13.8
	Person crime	96	24.0
Property crime		119	29.8

Source: Random sample (N=400). The Ns for the demographic variables indicate the number available once missing values were excluded.

*Low severity crimes include those ranking 1-3 (out of 9) on the Massachusetts Sentencing Guidelines scale.

For 50 percent of the women who had a prior conviction for a drug crime, the seriousness level of these crimes was level 3 or lower. (In the case of women charged with drug crimes, 75 percent of the charges were for Possession, Possession to Distribute, or Conspiracy to Violate Drug Law.) The person crimes were also on the low end of severity: 60.4 percent were for simple Assault and Battery or A&B with minor injury and 76.9 percent were level 3 or lower. Larceny was the typical charge for Property crime and the largest percentage of “other” crimes were Uninsured Motor Vehicle (19.7 percent) or Operating Under the Influence (16.7 percent).

1996 Criminal Offense (Lead Charge)

In order to examine case disposition and initial sentence, we followed the standard practice of identifying one “lead charge” in each offender’s arraignment docket as the current offense. The lead charge is the most serious offense in the first docket of 1996 that led to a conviction. If there was no conviction, the most serious offense was chosen.

Table 1 presents the profile of the women’s lead charge and shows that 58.5 percent were convicted on this charge. The crimes for which the women were charged were, like those in the prior records, neither violent nor very serious. Three quarters (76.3 percent) were charged with non-violent crimes and these were primarily (65.5 percent) misdemeanors. In addition, 83.5 percent of the women’s lead charges were ranked at level 3 or lower (of a possible 9 levels) using the Massachusetts Sentencing Guidelines Crime Seriousness levels. The percentages by type of crime were as follows: 29.8 percent were arraigned on a charge for a property crime, 24.0 percent for crimes against a person, and 13.8 percent for a drug crime;²³ 32.5 percent were arraigned on other charges. Only 5.9 percent of female defendants who were convicted on the lead charge, were convicted of prostitution, sex for a fee, etc.²⁴ A higher percentage (75 percent) of the women interviewed acknowledged prostitution, making it clear they resorted to sex for a fee to support their drug habits. The percent in the quantitative dataset is lower due to the well-established fact that women are rarely prosecuted on prostitution charges unless they are caught in an undercover operation and tend to be convicted of drug or other charges that take place concurrently with those involving sex.

Substance Abuse Identification

We used three data sources to determine the number of women who had a problem with alcohol and/or drugs, the process by which substance abuse is identified, and how frequently court personnel record this information. These included: interviews with court personnel; interviews with women defendants/offenders; and the review of the random sample of case files. Again, it should be remembered that these are case files drawn randomly from all women arraigned in the two district courts during 1996 and followed through June 1998, and are not limited to cases “on probation.”

Estimates by the court personnel interviewed of how many women involved in the criminal justice system have substance abuse problems ranged from 66 to 90 percent.

These estimates match those of the substance abuse and criminal justice literature.²⁵ In contrast to these estimates, however, a much smaller percentage of women were identified as having a problem with substance abuse in their official case records. Of the 400 case files reviewed, only 145 (36.3 percent) included a formal or informal notation that the offender had a substance abuse problem.

To determine the extent to which substance abuse was noted in the probation case files, we examined Risk/Need forms from five years prior to the date of the lead charge arraignment to the date of coding. The Risk/Need form is used to determine the level of risk an offender poses to the community and the level of probation supervision a probationer will require. We also examined the Conditions of Probation form (where these were available) and all other paperwork included in each record. Indications of substance abuse included, therefore, not only formal measures on the Risk/Need forms but also informal notes on intake forms, court notes, supervision sheets, and other documents within each record.²⁶

Not all notations of a defendant's substance abuse problem included the type of substance(s) used.²⁷ However, the percentages of women whose records include an indication that alcohol, drugs, or a combination of alcohol and drugs were similar to those reported elsewhere: 35.7 percent had notations specifically mentioning alcohol; 12.6 percent specifically mentioned drugs; and another 51.7 percent a combination of drugs and alcohol.²⁸

We found that the Risk/Need forms, when they were available, can do a good job capturing substance abuse problems: in cases where a form was in the record, substance abusing women's substance abuse problems were consistently recorded on the form. Because, however, Risk/Need forms are not intended for use as a screening tool for all female defendants who enter the system but rather as a planning tool when a woman is convicted and assigned to active probation supervision, only 7.8 percent of the cases in the random sample had a Risk/Need form in the case file.²⁹ In addition, given the increased training and education for court personnel initiated in conjunction with the Supreme Judicial Court Standards on Substance Abuse, follow-up research will be important to ascertain the extent to which expanded screening and assessment is taking place beyond the Risk/Need forms and what the effect is on substance abuse identification in the courts.

Interviews with court personnel show wide variations in how they perceive and use these instruments. One probation officer stated that the form was primarily "a tool to retrieve statistical data." Some felt the Risk/Need form was very helpful if offenders answer the questions honestly; others felt it was limited because the form is only filled out after someone is convicted and put on probation – therefore it is not helpful pre-sentencing.

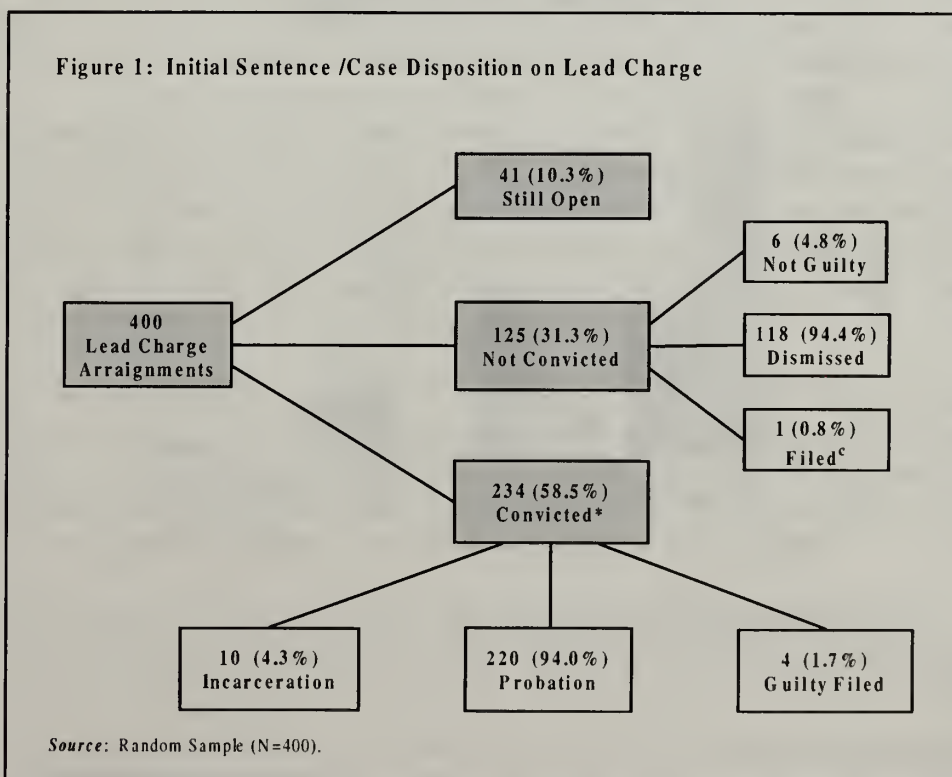
The difference between court personnel estimates and the official record in how many women arraigned in court have problems with substance abuse may reflect, in part, the informal nature of identifying and responding to substance abuse in the courts at the time of data collection in 1998. Both women offenders and court personnel interviewed agreed that probation officers and judges generally know when a woman has a substance

abuse problem, even if it is not recorded officially. A 47-year-old Hispanic woman, when asked if the criminal justice professionals were aware of her problem, answered: “Yes. All of the people in the court [knew] because I got brought in many times before.” A 42-year-old white woman said the police could tell she was high when she was arrested. And, a 29-year-old white woman said: “Yes. They all know of my history of sex on the streets to support my habit.” The qualitative findings suggest that frequent involvement in the criminal justice system increases the likelihood of being identified as a substance abuser. The fact that defendants may be advised by counsel (or may decide on their own) not to reveal their drug use might lower the percentages known to the courts – but this trend would most likely affect both the court personnel estimates as well as the official record and therefore is not a factor in explaining the difference between the two measures.

We found that over 95 percent of cases of those identified as substance abusers had a notation in the record *prior* to the date of the initial sentence on the lead charge. This suggests that courts would be able to make use of this information in deciding whether treatment should be included in the sentence, or as an alternative sentence in itself. An important question addressed in this study is: what impact does being officially identified as a substance abuser have on initial sentence and case disposition?

Initial Sentence and Case Disposition

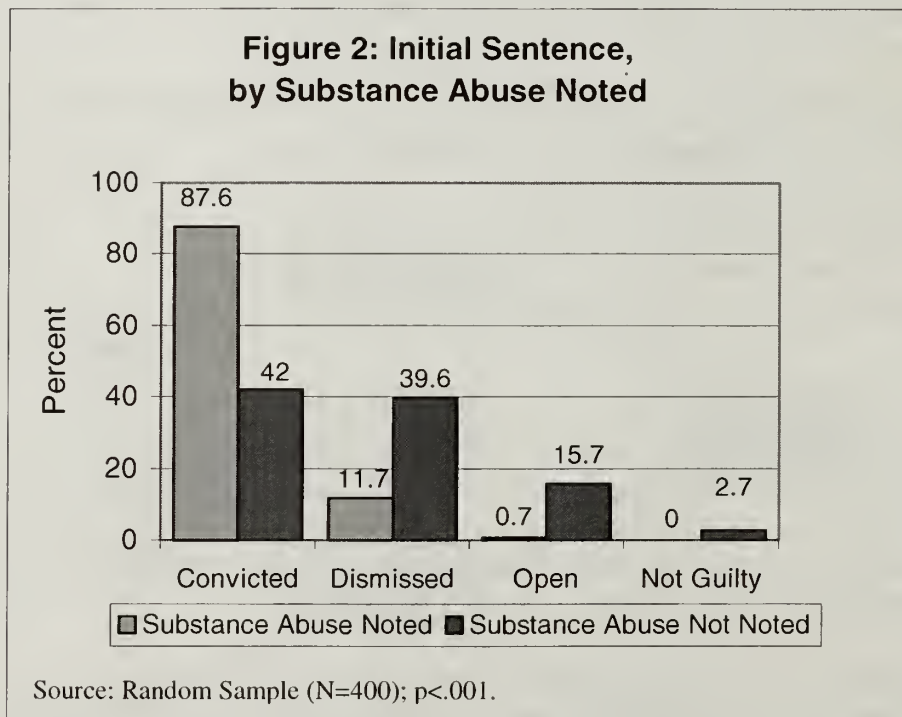
As can be seen in Figure 1, of the 400 women arraigned in 1996, 234 (58.5 percent) were convicted, 125 (31.3 percent) were not convicted, and 41 cases (10.3 percent) were still open in 1998.³⁰



Of the 125 women who were not convicted, 94.4 percent had their cases dismissed. Of the 234 women who *were* convicted, only 10 (4.3 percent) were incarcerated due to a sentence that included incarceration (i.e., “committed” or “split sentence”). These 10 women who were incarcerated make up only 2.5 percent of the 400 women arraigned. It is clear from these results that very few women receive an initial sentence that includes incarceration. The majority of cases are dismissed and, when a defendant is convicted, she is more likely to receive a sentence of probation.

Impact of Substance Abuse Identification on Conviction Rates and Initial Sentence

The findings show a significant difference in conviction rates for women with a substance abuse problem noted in their case files compared to those without such a notation. The following chart shows that 127 of the 145 women (87.6 percent) identified as substance abusers were convicted on the lead charge compared to only 107 of the 255 (42.0 percent) not identified as substance abusers.* The chart also shows a significant difference in the percentage of cases dismissed. While only a little more than ten percent (11.7) of cases with substance abuse noted were dismissed, over a third (39.6 percent) of cases without such a notation were dismissed.



* Please note: All differences presented in this report are statistically significant at least at p<05.

A combination of bivariate and multivariate analyses was used to identify the factors that led to these differences in conviction rates and dismissals. No significant differences were found between the two groups in race, age at date of lead charge arraignment, age at date of first adult arraignment, marital status, indigency, or the violent/non-violent nature of the lead charge.

There were, however, significant differences in prior record and offense characteristics that might explain the differences in case disposition. Women identified as substance abusers were more likely, for example, to have had a prior conviction (58.6 percent) compared to those not identified (33.7 percent). Larger percentages of the former (41.4 percent) than the latter (13.4 percent) had a moderate or serious record (defined as more than five misdemeanors and at least two felonies). Women identified as substance abusers were also more than twice as likely to have been convicted of a prior drug charge (18.8 percent compared to 6.6 percent) and to have a prior conviction on a charge against a person (20 percent compared to 11 percent).

Women with notations of substance abuse in their records also had prior convictions that would be classified as more serious: for 26 (31.0 percent) of the 84 women with substance abuse noted who had a prior conviction, the most serious prior charge that resulted in a conviction was classified as level 4 or higher compared to 15 (16.5 percent) of the 91 women with no such notation.

Substance abuse identification was also strongly associated with a history of prior incarcerations. While 352 (88 percent) of the offenders in our random sample had no history of prior incarceration, women identified as substance abusers were much more likely to have one or more prior incarcerations: 13 (9 percent) had one and another 23 (15.9 percent) had two or more compared to only 7 out of 255 (2.7 percent) of non-identified women had one prior incarceration and another 5 (2 percent) had two or more.

Women identified as substance abusers were more likely to have been charged with a drug crime at the lead charge arraignment: 34 (23.4 percent) of the substance abusing group had a drug-related lead charge compared to only 21 (8.2 percent) of the non-substance abuser group. Higher percentages of women identified as substance abusers had lead charges that were more serious and tended to be convicted on more charges than women not identified as having a substance abuse problem.

The above findings might suggest that the higher conviction rates for women identified as substance abusers are a logical consequence of a more serious prior record and lead charge offense. The multivariate analysis suggests, however, that identification as a substance abuser has a large, independent, and statistically significant effect on whether a female defendant is convicted.*

Controlling for other factors, the significant main effects on being convicted were: identification as a substance abuser, an offense against a person, and offense severity.

* Logistic regression of a random sample of female offenders (N=400). The regression tables 6-9 are included in the Appendix.

The effects of being identified as a substance abuser were the largest, followed by offense against a person and offense severity. In fact, the odds of conviction for women identified as substance abusers were about 14 times those of women not identified as substance abusers. These odds yield a difference in the probability of conviction between women identified as substance abusers and those not identified of 43 percent.³¹ (The seriousness of the offense and being charged with a crime against a person were negatively associated with being convicted, when other factors are controlled. This counterintuitive finding may be explained by the fact that the lead charge is the most serious offense and, due to plea bargains, etc., a defendant is often convicted on a lesser charge.)³²

The multivariate analysis of lead charge dismissal shows that, controlling for other factors, the odds of dismissal for women identified as substance abusers were much less likely than those for women not identified as substance abusers. These odds yield a 41 percent lesser probability of having the case dismissed for women identified as substance abusers than for those not identified. Being charged with a crime against a person and offense seriousness were positively associated with having one's case dismissed – the corollary of the negative association between offense severity and conviction discussed in the preceding paragraph.³³

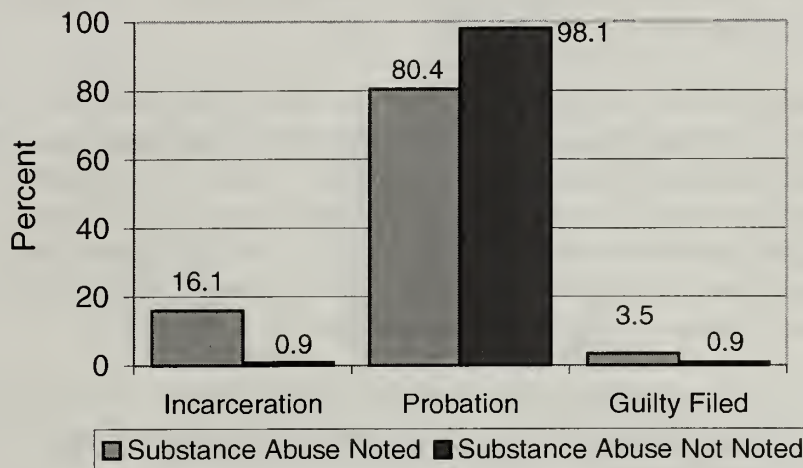
It is very important to keep in mind that we are not suggesting that the courts, e.g., judges or juries, receive specific information about substance abuse and that this information influences the determination of guilt or innocence. First, one cannot assume a causal relationship from the association evident in the data. Second, without additional research it is not possible to deduce the nature of this relationship or the exact reasons the rates are higher.

Impact of Substance Abuse Identification on Incarceration Rates in Initial Sentence

In order to understand the role of being identified as a substance abuser on incarceration rates we analyzed data on the 306 convicted female offenders in our total sample, made up of the 234 convicted offenders in the random sample plus 72 offenders drawn from an oversample of women who were convicted and identified in the records as substance abusers. Of these 306 women, 199 (65 percent) included a notation of substance abuse and 107 (35 percent) did not. (See the Appendix for a discussion of sampling methods).

Figure 3 shows that, for convicted female offenders, the vast majority received probation rather than incarceration. There is, however, a significant difference in the percentages who receive probation versus incarceration at initial sentence depending on whether they are identified as substance abusers or not. As can be seen in Figure 3, virtually all (98.1 percent) of women convicted on the lead charge who were not identified as substance abusers received an initial sentence of probation compared to 80.4 percent of women identified as substance abusers.

Figure 3: Case Disposition for Convicted Women Offenders, by Substance Abuse Noted



Source: Convicted Sample (N=306); $p < .001$.

In addition, for convicted female offenders, the likelihood of receiving an initial sentence that includes incarceration (i.e., “committed,” or “split sentence”) was substantially higher if their records indicate that substance abuse was noted by court personnel. Whereas, as was seen in Figure 1, only 10 out of 400 (2.5 percent) of female offenders in the random sample received a sentence that included incarceration (and, as we found, 10.8 percent of offenders in the convicted offender sample were incarcerated), virtually all of the incarceration sentences were imposed on women who are identified in the records as substance abusers.

In fact, as Figure 3 above shows, 16.1 percent of those identified as substance abusers were sentenced to jail or prison compared to less than one percent of those women whose case files did not include a notation of substance abuse. While it might seem logical to assume that declaring or revealing a problem with substance abuse would lead to leniency in the courts,³⁴ there seems to be a statistically significant relationship between being identified as a substance abuser and harsher sanctions including incarceration.

- Just as women identified as substance abusers were more likely to have a more serious criminal history, convicted female offenders appear to have a more serious prior record including prior drug crime convictions, a greater likelihood of having been convicted of a crime against a person, and a higher number of prior convictions. They were also more likely to have had one or more defaults prior to conviction on the lead charge compared to women not identified as substance abusers. They were not, however, more likely to have been convicted of a violent prior crime.

✓ Multivariate analysis suggests that having substance abuse noted in the record has a large, independent, and statistically significant effect on the offender's likelihood of being incarcerated as part of her initial sentence. While all of the variables discussed above seem to point again to a role for lead charge type and severity and prior record as predictors of incarceration as the initial sentence for female offenders in our study, multivariate analysis demonstrates the salience of being identified as a substance abuser in determining initial sentence.

Controlling for other factors, the significant main effects on being incarcerated as part of the initial sentence were: identification as a substance abuser and prior incarceration. The largest effect was being identified as a substance abuser. In fact, the odds of incarceration for women identified as substance abusers were about 17 times those of women not identified as substance abusers. These odds yield a difference in the probability of incarceration as part of the initial sentence of 44.5 percent between women identified as substance abusers and those not identified.³⁵

Defaults were significant at $p < .05$ but the odds were quite small for this variable (1.03 which yield a probability difference of less than 1 percent). Age, race, court and offense type were not significant factors.

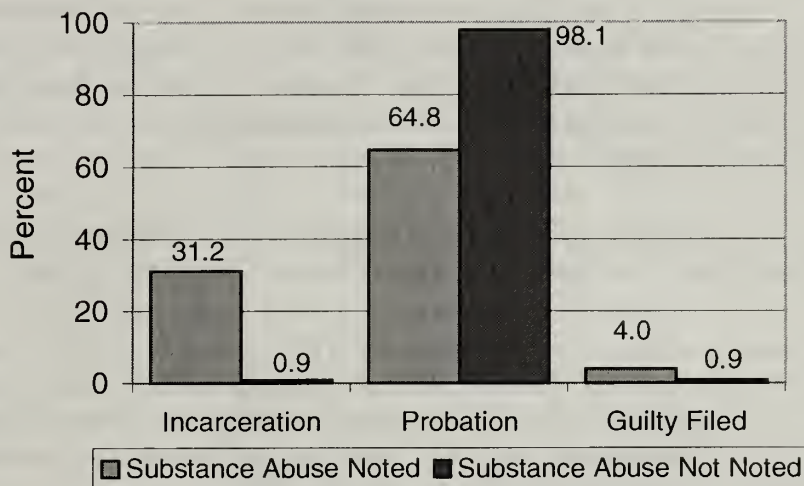
Impact of Substance Abuse Identification on Final Outcome

While our efforts were concentrated primarily on the court response to substance using female offenders as evidenced in the case disposition and the initial sentence imposed, we recognized that the *final outcome* of a woman's case could ultimately result in incarceration even though that was not the initial sentence. Incarceration could occur, for example, because of a violation of probation, defaults, or re-arrest on a new offense, among other factors.

✓ We found a strong association between incarceration as the final case outcome and being identified as a substance abuser in the case files. Of the 63 women who were ultimately incarcerated on the lead charge, 62 were women who had been identified in the records as substance abusers.

Figure 4 shows the final case outcome for convicted women offenders by substance abuse noted in their case records. In cases where substance abuse was noted, 31.2 percent of the offenders were incarcerated compared to only 0.9 percent of those without substance abuse noted. There was a corresponding large gap in the percentages of women whose final case outcome was probation: only 64.8 percent of those with substance abuse noted received probation compared to 98.1 percent of those where no such notation was found.

Figure 4: Final Case Outcome for Convicted Women Offenders, by Substance Abuse Noted



Convicted sample (N=306); $p < .001$. Percentages may not add up to 100 due to rounding.

The multivariate analysis confirmed this pattern: the odds of incarceration as the final case outcome for women offenders identified as substance abusers were similar to those of incarceration as part of the initial sentence. Again, women identified as substance abusers had a 44.5 percent greater probability of incarceration as their final case outcome than those not identified.³⁶

Prior incarcerations had a significant effect on incarceration both in the initial sentence and final case outcome. The odds of incarceration as part of the initial sentence and final case outcome were five to six times greater for women offenders with prior incarcerations than without prior incarcerations.

Several conclusions may be drawn from the above findings. First, a majority of women convicted in the two courts received probation as their initial sentence and final case outcome and few were incarcerated. Second, women whose substance abuse was noted in their case records were incarcerated at much higher rates than women whose records included no such notation. This fact has not been documented for Massachusetts women until now and poses a troubling paradox at the juncture of the criminal justice and public health systems: how can more women receive treatment for substance abuse as a health problem if their substance abuse is hidden or denied – or, as these results suggest – the criminal justice response may be higher conviction and incarceration rates?

In their Own Words: The Sentencing Experiences of Female Offenders

Face-to-face interviews were conducted with a sample of female offenders in order to provide a clearer picture of the issues that are faced by substance abusing female offenders. We interviewed ten women incarcerated at Massachusetts Correctional Institution-Framingham and six women with criminal justice histories receiving substance abuse treatment in the community. Interviews were completed from June through September 1998.³⁷ These interviews put a human face on the sentencing experiences of women with substance abuse problems.

Some of these women found the courts helpful in their struggle with substance abuse.

One woman had a very positive experience and said she was grateful to a specific judge who continued to let her “try again to get the demon of drugs under control again. I am grateful he has not thrown us in prison, but lets us keep trying to get it right.” For the most part, however, the women who were incarcerated felt that neither their lawyers nor the court personnel were on their side. One woman said, “I was told because I was a thief, I should not ask for substance abuse help.” Another said the court did “Nothing. I was told by the bail person in court to shut up and sit down.”

Another woman seemed stunned that she was incarcerated: “I got three years sentenced at MCI-Framingham for possession and intent to distribute heroin and possession of drug paraphernalia. This is my first. Why did I get so much time?” And, one 30 year old woman who, at the time of the interview, was in an inpatient treatment program, illustrated an extreme response when she asked for help with substance abuse: “It fell in one ear and out the next to both probation who stated, ‘You’ll get the help you need in jail,’ and my lawyer when I told him to ask the judge if I could go to a detox replied, ‘Where do you think you are? At f____ McDonald’s, where you can have it your way?’”

One recurrent theme among those offenders who felt the court response was less than adequate was the professionals’ frustration with the women’s patterns of re-offending and reappearing in court. One woman said court personnel “pretty much look[ed] at me in disgust that once again I’m back.” The impact of prior incarcerations on subsequent sentencing was illustrated by a 29 year old white woman who acknowledged her long history in the criminal justice system and the quick response once it was discovered she was on parole: “Before the police and courts were aware of my being on parole, they were going to try to get me into a detox. But as soon as they found out, they just shipped me back. I got another two years, total of four years to do at MCI-Framingham.”

Alternatives to Incarceration

Virtually all prior reports on female offenders in Massachusetts have stressed the need for alternatives to incarceration. Alternative sentences may include, either separately from or concurrently with probation, electronic monitoring, intensive supervision, house arrest, community service, restitution, fines, and, specifically for substance abusers, drug court and urinalysis. Nationally, probation is the most liberally used criminal sanction and we

found that, as Figure 1 showed above, 94 percent of women in the random sample who were convicted received probation, not incarceration, as their initial sentence. These results support the view that courts in Massachusetts utilize incarceration very sparingly with women offenders.

Even those identified as having substance abuse problems – who were incarcerated at higher rates – were still most likely to receive probation rather than jail or prison time. As seen in Figure 3 above, 80.4 percent of women identified as substance abusers who were convicted on the lead charge received probation whereas only 16.1 percent were incarcerated at the time of initial sentence. And, even when considering final outcome (Figure 4) where convicted women identified as substance abusers had substantially higher incarceration rates (31.2 percent compared to only one percent of women not identified as substance abusers), a high percentage (64.8) were still most likely to receive probation.

While probation is a frequently used alternative to incarceration, we found little evidence in the case files or in interviews that female offenders are being officially sentenced to alternatives such as electronic monitoring, intensive supervision, day reporting, or house arrest used in other states. Table 2 shows the alternative sentences received by the 199 convicted female offenders with substance abuse noted in their record.

The most frequently applied alternative was random urinalysis as a condition of probation: 23.3 percent of the cases required that the offender participate in random urinalysis. The next most frequently used alternative was a financial sanction, Restitution (23.3 percent). (An even larger percentage was ordered to pay into the Victim Witness Fund, 25.1 percent, but this is considered a fee rather than an alternative sentence.) Alternatives such as specific treatment, drug counseling or drug court appear in only small percentages of files: 10.1 percent of files included Education/Treatment Program (non-specified) and 4.5 percent specifically mentioned a Drug Counseling/Treatment program.

Table 2
Alternative Sentences on Lead Charge
For Offenders with Substance Abuse Noted

Initial Sentence	N	Percent
Random Urinalysis	37	23.3
Restitution	27	13.6
Education/Treatment Program	20	10.1
Drug Counseling/Treatment	9	4.5
Drug Court	7	3.5
Fine	3	1.5
Community Service	2	1.0

Source: Sample of convicted offenders with substance abuse (N=199) noted in case file. Note: sentence categories are not mutually exclusive.

Only 3.5 percent of cases included a specific referral/sentence to the Drug Court (although it might be that, once this condition is complied with, the sentence is dismissed and therefore would not appear in the record). Community service as an alternative appears rarely and there were no records of electronic monitoring, house arrest, or day reporting.

Treatment and the Court's Response to Substance Abuse

A major goal of this study was to explore the courts' response to substance using female defendants/offenders including the percentage of substance abusing defendants/offenders who receive treatment as a result of their court involvement; the predictors of receiving treatment; and the kinds of treatment defendants/offenders receive. To answer these questions, we analyzed data from the random sample of case files, the qualitative interviews, and a third source: the Department of Public Health's Bureau of Substance Abuse Services (BSAS) admission data from 1996.

Treatment Rates

In the random sample of female defendants, 145 women were identified in their case records as having a substance abuse problem. Of these, 90 (62.1 percent) received some type of treatment intervention during the five years leading up to the initial sentence/case disposition on the lead charge. More specifically, 47 (32.4 percent) received a recommendation or referral to treatment and 44 (30.3 percent) were court ordered to treatment between the date of arraignment on the lead charge to the date of initial sentencing/case disposition.³⁸ (These two categories are not mutually exclusive: 68.2 percent of those who were recommended or referred to treatment also received a court order.)

Court-ordered treatment (a response that carries more weight than a referral or recommendation) included either a sentence to drug counseling/treatment, or a Section 35 commitment, or included random urinalysis, drug or alcohol treatment, or drug court as a condition of probation. In contrast, an intervention of "recommended" or "referred" ranged from a formal (i.e., with documentation) referral to a court clinic or a specific treatment program mentioned by name to a more informal notation such as "should get treatment" or "referred to program") or other notation such as "attended AA"; "is attending" a program).³⁹

Predictors of Receiving Court-Ordered Treatment

Multivariate analysis was conducted to identify the predictors of court-ordered treatment for convicted offenders identified as substance abusers. This analysis reveals that the type of crime was the key determinant of whether a woman receives court-ordered treatment. In fact, controlling for other variables, the significant main effects for convicted female offenders identified as substance abusers receiving court ordered

treatment were: being charged with a drug crime, followed by types of crime other than property or person, and having a serious prior record.

The largest and most significant effect was being charged with a drug crime. The odds of receiving court ordered treatment for convicted substance abusing women charged with a drug crime were about eight times those of convicted substance abusing women charged with a property crime. These odds yield a difference in the probability of receiving court ordered treatment between those charged with a drug crime and those charged with a property crime of almost 40 percent.⁴⁰ Socioeconomic characteristics (such as age and race), court, offense severity, and prior record were not significant factors, nor was being convicted of a crime against a person.

These results suggest that the courts are most responsive to the substance abuse treatment needs of female offenders when their substance abuse appears to be linked directly to crimes involving drugs. It also reflects the very common practice of equating "substance abusing offenders" with "drug offenders" when not all offenders who commit a controlled substance crime are substance abusers and most substance abusing offenders do not commit drug crimes.

Our data show, for example, that, while women who are identified as substance abusers were significantly more likely to commit and be convicted of controlled substance (drug) crimes, the lead charge for 75 percent of the women who were convicted and identified as substance abusers was not a drug crime. In addition, 68.8 percent of convicted women identified as substance abusers had no controlled substance crimes in their prior record and 75.9 percent had no prior convictions on a crime involving a controlled substance.

These findings suggest that providing treatment to substance abusing petty criminals before they turn to more serious crimes may be of equal or more importance than treating drug offenders.

Knowledge of Treatment Resources

Court personnel, for the most part, were knowledgeable about treatment resources. In one court, for example, probation officers make use of a printed substance abuse treatment directory to seek appropriate services. In the other court, probation officers typically knew specific clinicians by name. As one officer said, "Probation officers develop personal relationships with workers in the community. They get a feel for whom the client will be able to work with."

There was, nevertheless, a wide disparity in the knowledge and training of probation officers on substance related topics; some specialize in substance abuse whereas others have little training. Many probation officers, for example, knew about training offered by the Department of Probation but, since this was not mandatory, could select training on topics unrelated to substance abuse.

Another problem is that, other than for court ordered treatment which includes penalties for non-compliance, a notation that treatment was “recommended,” that an individual was “referred to treatment” or that she “is attending” or “has attended” did not necessarily include any direct court intervention. Such a recommendation or referral might be simply an informal statement to the offender that she should get treatment (i.e., on her own initiative). A 47-year-old Hispanic woman found this less than helpful. She said, “They told me to go to AA/NA [Alcoholics Anonymous/Narcotics Anonymous] meetings but they never sat down with me to give me a list or an address where I can go by myself.”

Treatment Availability

One of the most significant findings of this study is the limited availability of treatment services for substance using female offenders. The lack of services was discussed by all three groups of interviewees – court personnel, treatment providers, and offenders.

Interviews with the statewide random sample of 21 treatment providers suggest that treatment availability depends on the type of treatment modality.⁴¹ The wait for admission to a treatment program was greatest for those in need of detoxification – a critical entry point for substance abuse treatment. Three of the four detox programs included in our sample reported a waiting list – two with waiting periods of several days and one with an expected wait of five to ten days.

Waiting periods for admission to residential programs were also long. Five of the six residential programs reported waiting lists resulting in delays ranging from two weeks to two months. According to the treatment providers interviewed, the result of these waiting lists include some women being paroled home from prison or staying at home; some were able to enter a day treatment program and some relapsed. Methadone and outpatient treatment programs in the sample were somewhat less likely to report waiting lists.

Section 35 commitment can be used to compel offenders into treatment involuntarily. The criminal justice literature is clear that coerced treatment can be effective. Many of the court personnel we interviewed lamented the lack of sufficient numbers of secure beds to which substance abusing offenders can be ordered.

We should not conclude this section of the report without acknowledging the fact that receptivity on the part of both the substance abuser and the judges are major factors in determining whether a substance abusing offender received treatment. One probation officer, for example, stated, “Motivation is an issue with clients more than the availability of services.” Others felt, however, that some judges are more amenable than others to input from probation officers regarding treatment. Another important factor was the limited knowledge about substance abuse on the part of attorneys – and the limited time appointed attorneys have for a given case. The extremely high rates of indigency noted earlier suggest that women offenders are very likely to have court appointed attorneys with limited time to advocate for treatment.

Value of Treatment

Treatment, when it was received, was generally thought to be very helpful by both court personnel and offenders. Court personnel saw the courts as being in an excellent position to help women with substance abuse problems. One probation officer said, for example: “The court has the authority to order treatment. This is a big club.” Another reaffirmed what is well known in the criminal justice field: “Mandatory treatment works. . . . We have the teeth. We have the enforcement. Probation officers can make unannounced home visits. They can request urine specimens. We hold a lot of cards.” Offenders, many of whom had experienced sexual and other abuse during their lives,⁴² found treatment made them feel, as one woman said, “safe and protected with people that cared about the illness and how hard it is to leave the drug life.”

Of course, the ultimate card – incarceration – can result in a troubling paradox. The criminal justice system’s “club” for substance abusing women may contribute to the higher incarceration rates in the final case outcome we found in this study: if a woman is unable to comply with court-ordered treatment (i.e., violates the terms of her probation), she may be incarcerated, even if this was not her initial sentence.⁴³ Given the fact that relapse is common for substance abusers in and out of the criminal justice system and relapse is likely to play a role in an offender’s ability to comply with the terms of the court, the paradox of being identified as a substance abuser, being court-ordered to treatment, and ultimately being incarcerated is troubling. A solution to this problem is not readily apparent; further research and analysis is clearly needed.

Public Health Treatment for Criminal Justice Clients

The Massachusetts Department of Public Health’s Bureau of Substance Abuse Services (BSAS) provided us with 1996 statewide admission and discharge data for women with and without criminal justice system involvement.⁴⁴ Analysis of admission data included a comparison of these two groups by demographics, referral source, primary substance abused, number of prior admissions, and treatment modality. Discharge data analysis included reason for discharge, services received upon discharge, and percent receiving referral at discharge. We included data from 1996 to allow comparability with the arraignment data in the quantitative court data.

Admission data included 6812 women categorized as Criminal Justice System (CJS) admissions and 20,710 Non-CJS admissions. The Criminal Justice System (CJS) designation includes females over 18 admitted to a BSAS funded program during 1996 who had some type of criminal justice involvement including a referral from or services received by the Departments of Correction, Parole, or Probation. (After careful consideration of admission procedures for drunk driving cases, these were excluded from the analysis.⁴⁵)

Source of Criminal Justice Referrals and Services Received at Admission

Direct referrals from the Department of Probation made up 7.8 percent of all treatment referrals to BSAS programs for women who were involved in the criminal justice system in 1996. Another 12.8 percent were court-ordered and 9.4 percent were referrals from the Department of Correction. (Section 35s, specifically, make up 4.9 percent of referrals.) Less than 2 percent were referred by the Parole Board or Legal Prerelease.

Women involved in the criminal justice system were less likely to have more than one admission to a DPH funded treatment program. There was a large and significant difference between the percent of criminal justice clients that had only one admission (73.3 percent) during 1996 compared to the percentage of non-criminal justice system clients (63.3 percent).⁴⁶ Of particular significance to our study is the fact that, the portion of CJS women who had no prior treatment admissions (33.0 percent) was much larger than non-CJS women (16.3 percent). A question arises: are women not involved in the criminal justice system getting more treatment opportunities than women who have become involved in the criminal justice system? Or, phrased differently, does the criminal justice system become a substitute for treatment that is available to women who have not been arrested?

A partial answer to this question may lie in the data on which treatment modalities CJS admissions receive compared to non-CJS admissions. Table 3 shows that only 30.1 percent of CJS women received admission to Acute Treatment compared to 51.1 percent of non-CJS. For Non-CJS clients, 51.1 percent are admitted to acute treatment and 31.9 percent to ambulatory/outpatient.

Table 3
Treatment Modalities of BSAS Female 1996 Admissions
(excluding Drunk Drivers), by Criminal Justice Involvement

Modality	CJS N (%)	Non-CJS N (%)
Acute Treatment	1,393 (30.1)	10,578 (51.1)
Residential	380 (8.2)	1,416 (6.8)
Ambulatory (Outpatient)	2,405 (51.9)	6,609 (31.9)
Methadone	102 (2.2)	1,402 (6.8)
Other	354 (7.6)	705 (3.4)
Total	4,634 (24.8)	20,710 (75.2)

Source: BSAS Female 1996 Admissions (p<.001) (N=25,344)

We may conclude from these findings that CJS clients are considerably less likely to receive acute treatment and more likely to receive ambulatory services than non-CJS clients.

Completion Rates and Referrals for Services at Discharge

Despite certain limitations in using the discharge data,⁴⁷ we were able to examine the reasons for discharge, the percent of discharges receiving different types of service, and the overall percent receiving a referral at discharge. These data reveal striking differences between CJS and non-CJS discharges.

First, as can be seen in Table 4, CJS women admitted to BSAS treatment programs are more likely to complete treatment (56.8 percent) compared to non-CJS women (42.1 percent).

Table 4
Completion Rates and BSAS Discharge Services Offered,
by Criminal Justice Involvement

	CJS (%)	Non-CJS (%)
Completed Treatment	56.8	42.1
Received Medication for Withdrawal	19.7	50.6
Referred to Self-Help Group	63.0	73.8
Received Referral at Discharge	71.4	82.6

Source: BSAS Discharge data, 1996 (p<.001).

They are also less likely to drop out of treatment: 21.9 percent for CJS clients compared to 39.5 percent for non-CJS women – presumably due to the legal consequences of court ordered treatment.

Second, there was a very large and significant difference between CJS and non-CJS discharges who received medication for withdrawal. The table shows that 19.7 percent of CJS discharges compared to 50.6 percent of non-CJS discharges received such medication (presumably because of the much higher portion of the latter who, as discussed above, received Acute Treatment services). CJS women were less likely to be referred to a self-help group (63.0 percent compared to 73.8 percent) and to receive medication for medical or emotional problems.⁴⁸

Finally, it appears that CJS women are less likely to receive a referral at discharge than non-CJS women. As can be seen in the above table, 71.4 percent of CJS discharges were provided a referral to other post-discharge services whereas 82.6 percent of non-CJS discharges received such a referral.⁴⁹

Children, Substance Abuse, and the Courts

It is important to note that court case files reviewed in this study did not include a systematic way of recording the number of children for women who are arraigned in court. The Probation Department Intake Form includes a place to mark the “number of dependents” as part of the determination of indigency. While we might assume that women, at least, may interpret “dependents” to mean primarily children but, given the saliency of children in the lives of many women, this lack of information makes it difficult to know what portion of women have lost custody of their children due to the interaction of substance abuse and criminal justice involvement.

Three-quarters of the female offenders we interviewed stated that they had children (mean 2.9). National studies suggest that about two-thirds of women in the criminal justice system have children under the age of 18 – a portion remarkably close to the 66 percent in our random sample “with dependents.”⁵⁰ The fact that only 47 percent of our random sample of offenders drawn from the probation case files are living with children at the time of intake might suggest that they are living with other dependents such as parents, siblings, etc. We found that 11.4 percent of those not living with their children lived with their parents, for example. On the other hand, a likely scenario is that a relatively large portion have lost custody of their children or informally given custody to others. Also, living with one’s parents (or other “dependents”) does not preclude also having children in the care of the Department of Social Services.

An inquiry into the data collection process at the Department of Social Services revealed that, like the Probation Department, DSS does not systematically track or report the percentage of children who are in their care because their parents are in jail or prison – or were removed following an arrest.

There was considerable consensus among treatment providers interviewed that children have an enormous impact on substance abuse treatment for female offenders: it is much more difficult to access treatment when there are children involved. Some providers stated that it is difficult for women to focus on their recovery when the relationship with their children is ruptured. The impact on some of the women is seen in the words of a 36 year old Latina woman in MCI Framingham who is the mother of three children: “I wish I could talk to someone here about how much of a hole I have about the loss of my babies.”

A significant irony exists: Having children is a powerful motivator for treatment while, at the same time, the presence of children is a barrier since it is difficult to make arrangements for their care. Treatment providers reported that many women leave treatment prematurely because their children cannot be cared for adequately or safely. Others reported that some women are reluctant to accept treatment because of fears that their children will be taken away. The strongest area of agreement among the three groups of interview respondents (court personnel, treatment providers, and offenders) was that residential treatment programs where children may remain with their mothers are greatly needed in Massachusetts.

The long-term effects on the children of incarcerated parents have received considerable attention of late. Research shows that children of those who are incarcerated are more likely to suffer anxiety, depression, aggressive behavior, school problems, and teen pregnancy.⁵¹ Further research about how many children are affected by – and the impact of – the arrest, arraignment, and conviction of women offenders is clearly needed.

Summary of Major Findings

Defendant Profile

- Analysis of data from a random sample of 400 women defendants drawn from two district courts found an average age of almost 31 years; 85 percent of the women were not married at the time of the study; 60 percent were unemployed and 95 percent were declared indigent at the time of arraignment.
- The majority of women defendants were arraigned for offenses that were non-violent and relatively minor in seriousness according to the designations established by the Massachusetts Sentencing Guidelines.
- Almost six of every ten cases arraigned before the two courts in the random sample of 400 women had no prior convictions. Of those defendants with a prior conviction, 85 percent were for non-violent crimes.
- Of those defendants who were convicted (58.5 percent), 94 percent were sentenced to probation. Only 4.3 percent received an initial sentence that included incarceration.

Substance Abuse Identification and Impact on Case Disposition

- Defendant case files formally identified 36 percent of the women as substance abusers in contrast to court personnel who estimated the range to be from 66 to 90 percent of all women arraigned before the courts.
- Almost eight of every ten women who were identified as substance abusers and who were convicted had no prior convictions for drug offenses.
- Formal identification of a defendant as a substance abuser significantly increased the likelihood of conviction.
- Four out of every ten defendants with no substance abuse noted in their files had their cases dismissed in contrast to only one of every nine women defendants where substance abuse was formally noted in case file documents.
- Virtually all of the women who were incarcerated were identified in their official records as substance abusers. And, controlling for other factors, the odds of a convicted woman offender identified as a substance abuser being incarcerated as part of her initial sentence and/or final case outcome were significantly greater than those of an offender not identified as a substance abuser.

Treatment Availability and Utilization

- Treatment services for substance abusing women offenders are severely limited, especially for detoxification and inpatient services. Residential programs where children may remain with their mothers are greatly needed.
- Alternative sentences such as intensive supervision, house arrest, or electronic monitoring were utilized infrequently at the time of the study in 1998.
- The odds of being court ordered to treatment for convicted substance abusing women were significantly greater for women convicted of a drug crime than a property crime.
- Women involved in the criminal justice system who are admitted to DPH-funded programs were more likely to complete treatment than women who enter these programs from other avenues. On the other hand, they are less likely to receive medication for withdrawal, be referred to self-help groups, or receive referrals upon discharge.
- Data on the numbers of women defendants/offenders with children, the relationship of substance abuse and child care and neglect, and the impact of treatment modalities on the health and welfare of children are lacking in Massachusetts at the current time.

Recommendations

Many of the findings in this study support the work of other researchers and policymakers who are concerned about the problems of substance abusing women, especially when they confront the criminal justice system following arrest and arraignment. Other findings, such as the large independent and significant effect on conviction and incarceration rates of being identified as a substance abuser in the official record raise new issues to be examined. The implications of this study's findings need substantial thought when considering our recommendations. These include the following:

1. The Office of Probation is encouraged to continue its efforts to develop and implement systematic and uniform screening processes (including types of substance used) and to institute a treatment referral procedure system that does not create legal penalties (including more serious sentences) for women who are identified as substance abusers.
2. Improved coordination between the Department of Public Health's treatment service system and the criminal justice system is essential so that clear and uniform procedures assure that substance abuse screening and identification results in treatment rather than harsher sentences. This includes increased substance abuse training for judges, probation officers, and lawyers.
3. The Supreme Judicial Court of Massachusetts is encouraged to conduct a comprehensive review of how women arraigned before the courts are identified as substance abusers and to what extent this identification may influence case dispositions and sentencing outcomes.
4. Early identification (including a uniform screening process) should provide a clearer pathway to assessment and a linked response to treatment, intensive supervision within the courts, and a graduated system of criminal sanctions other than incarceration.
5. Treatment services need to be increased for female offenders so that delays in accessing programs – especially detoxification and inpatient services – do not precipitate further criminal activity and/or harsher sentences.
6. Treatment services need to be provided to women defendants/offenders who have substance abuse problems but who have not been charged with or convicted on drug-related offenses.
7. The Office of Probation should record at Intake what portion of women have children (not just dependents); what percentage of these are under 18; and what impact the arrest will have on the care of these children. A more systematic tracking of the number of children women have at the time of arrest and/or arraignment – and concerns women offenders have about their children – may

have a major impact on the woman's ability to fulfill the terms of probation, receive/benefit from treatment, and avoid the costs of incarceration. Increased coordination between the Office of Probation and the Department of Social Services will facilitate these efforts. The impact of children on the treatment of substance using female offenders – and the impact of women's involvement in the criminal justice system on the lives of children – needs more research and assessment.

8. Further research is needed to determine the generalizability of these findings to other courts in the Commonwealth and to assess over time the impact of recent efforts including (a) substance abuse education and training for court personnel; (b) development of a drug testing protocol; (c) testing of a substance abuse screening tool; and (d) model policies to assist judges in implementing the Standards on Substance Abuse.

Because of the complex relationship between substance abuse and crime as both a criminal justice problem and a public health problem, we suggest that a “Women, Substance Abuse and Criminal Justice Forum” be held with participants including court personnel, substance abuse treatment providers and women offenders. This summit would provide a multi-disciplinary forum where policies could be developed to improve communication and coordination between the public health (treatment services) and criminal justice (sanctions) systems. If, as our findings suggest, higher incarceration rates occur for women identified as substance abusers because substance abuse increases criminality and then makes compliance with the terms of probation more difficult, merely increasing screening and identification of substance abuse problems may serve only to increase incarceration rates even further.

Notes

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- ¹ ADAM (Arrestee Drug Abuse Monitoring Program), "Adult Program Findings 1997," (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 1997). Drugs tested include alcohol and all illicit drugs.
- ² U.S. Department of Justice, Office of Justice Programs, *Substance Abuse and Treatment, State and Federal Prisoners, 1997*, Bureau of Justice Statistics Special Report, NCJ 172871, by Christopher J. Mumola. (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, January 1999), 7.
- ³ The 1997 Survey cited above reports that 40.2 percent of female State prisoners (compared to 32.1 percent of male State prisoners) reported using drugs at the time of the offense.
- ⁴ Ronald B. Flowers, *Female Crimes, Criminals and Cellmates: An Exploration of Female Criminality and Delinquency* (Jefferson, N.C.: McFarland & Co., 1995), 215.
- ⁵ K. Maguire and A.L. Pastore, *Sourcebook of Criminal Justice Statistics – 1995*. (NJC Report No. 158900). (Washington, D.C.: National Institute of Justice, Bureau of Justice Statistics, 1996).
- ⁶ Marc Mauer, Cathy Potler, and Richard Wolf, *Gender and Justice: Women, Drugs, and Sentencing Policy* (Washington, D.C.: The Sentencing Project, 1999). Quote is from the Executive Summary, www.sentencingproject.org/news/executive%20summary.html, downloaded 18 November, 1999.
- ⁷ For an analysis of these reports, see Patrick Boyle, "Drugs and Crime States Rise: Are Girls Getting Worse, or Are Adults Getting Scared," *Youth Today: The Newspaper on Youth Work*, Vol. 8, No. 2 (February) 1999: 1, 16-18.
- ⁸ Commonwealth of Massachusetts, *Female Offender Advisory Group Report*, Boston, 1988; Commonwealth of Massachusetts, Governor's Special Advisory Panel on Forensic Mental Health, *Final Report*, 1989; Commonwealth of Massachusetts, Supreme Judicial Court, Substance Abuse Project Task Force, *A Matter of Just Treatment: Substance Use and the Courts*, Boston, March 1995; and Massachusetts State Legislature, *Report of the Special House Committee to Investigate the Condition and Treatment of Females in the Criminal Justice System*, Boston, January 1993.
- ⁹ Governor's Special Advisory Panel, 221.
- ¹⁰ Governor's Special Advisory Panel, 239.
- ¹¹ Report of the Special House Committee, 5.
- ¹² See, for example, Douglas Anglin and Yih-Ing Hser, "Criminal Justice and the Drug Abusing Offender: Policy Issues of Coerced Treatment," *Behavioral Sciences and the Law*, Vol. 9, 1991: 243-267; and Jean Wellisch, et al., "Drug-Abusing Women Offenders: Results of a National Survey," *National Institute of Justice Research in Brief*, October 1994.
- ¹³ Supreme Judicial Court Standing Committee on Substance Abuse, *Standards on Substance Abuse*, Approved on April 28, 1998, by the Justices of the Supreme Judicial Court, in collaboration with the Massachusetts Trial Court, 4.
- ¹⁴ *Ibid.*
- ¹⁵ Indigency is determined for the purpose of providing counsel (i.e., a public defender). An offender is considered indigent if s/he receives public assistance or if they fall within the federal poverty guidelines. Information received from the Probation Department indicates that indigency is set at 125% of the Poverty Threshold. In 1998, therefore, an offender would be declared indigent (and be appointed counsel) if, for a family of three, his/her income was less than \$17,062 per year ("Affidavit of Indigency – 1998," Massachusetts Office of Probation, based on G.L.c 261. § 27A, and by the Supreme Judicial Court Rule 3:10, § 1(f)(ii), as amended effective October 1, 1993.)

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- ¹⁶ The American Correctional Association, for example, issued a report in 1990 that found the average adult female offender to be a minority between the ages of 25 and 29, who had either never been married or was a single parent living with one to three children ("The Female Offender: What Does the Future Hold?" American Correctional Association, Laurel, MD: 1990), 6. See, also, U.S. Department of Justice, Office of Justice Programs, *Substance Abuse and Treatment, State and Federal Prisoners, 1997*, Bureau of Justice Statistics Special Report, NCJ 172871, by Christopher J. Mumola. (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, January 1999), 7.
- ¹⁷ The percentage of Hispanic/Latina women in the interview case studies was somewhat higher than in the representative random sample of the quantitative analysis in order to assure sufficient numbers in this group.
- ¹⁸ Most, if not all, studies of court response to criminal behavior include some attention to past criminal history. See, for example, Darrell Steffensmeier, Jeffery Ulmer, and John Kramer, "The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male," *Criminology*, Vol. 36, No. 4 (1998): 763-797; and Darrell Steffensmeier, John H. Kramer, and Cathy Streifel, "Gender and Imprisonment Decisions," *Criminology* Vol. 31 (1993): 411-446.
- ¹⁹ Massachusetts Sentencing Commission, *Report to the General Court*. (Boston: Massachusetts Sentencing Commission, April 10, 1996).
- ²⁰ *Ibid.*
- ²¹ These are not dissimilar to the profile provided by the American Correctional Association who found that the most common offenses were property crimes (39 percent) and crimes of violence (22 percent). Some of the other research suggests that a higher percentage of convictions are for drug crimes. Flowers reports that, nationally, in 1991 almost 33 percent of female inmates were convicted of drug offenses; the Governor's Advisory Panel found in 1989 that 27 percent of Mass female offenders were sentenced for drug-related offenses and the Special House Report stated that 38 percent of women in Framingham prison were convicted of drug offenses.
- ²² Note: The demographic data was distilled from numerous sources within the case files on each offender in our sample; these sources included the intake form, probation supervision notes; conditions of probation form; and Adult Risk/Need form. Age was age at date of lead charge arraignment. For Race/Ethnicity, Black includes African American, Cape Verdean, Haitian, and "black;" "Other" collapses the one Asian, one Native American, with all those marked "other"; 39 (9.8 percent) were missing. Marital status of "single" includes 68.6 percent single, 2 percent widowed, 5.5 percent separated, and 8.7 percent divorced. Data on employment and indigency status were taken from the Intake form on date of arraignment.
- ²³ A 1994 report by the National Institute of Justice states that, while "drug offenses constitute only 7 percent of the charges for which women are arrested and about 12 percent of the crimes for which they are incarcerated in prisons, these numbers are deceptively low as indicators of drug involvement by women offenders" (National Institute of Justice, *Drug-Abusing Women Offenders: Results of a National Survey*, National Institute of Justice Research in Brief, NCJ 149261, by Jean Wellisch, Michael Prendergast, and M. Douglas Anglin. Washington, D.C., National Institute of Justice, October 1994), 1. The percentage of women offenders charged with a drug crime was lower than those reported in Massachusetts. The Massachusetts Sentencing Commission reports that, in 1995, 31.5 percent of the sentenced (and incarcerated) female population was sentenced on drug charges. Analysis of offenders in our sample who were incarcerated shows that 30.3 percent were convicted on a drug charge, a statistic remarkably close to that of the Sentencing Commission report ("Department of Correction Sentenced Female Population, January 1, 1995," *Massachusetts Sentencing Commission, Report to the General Court*. (Boston: Massachusetts Sentencing Commission, April 10, 1996), 53.
- ²⁴ For a discussion of this topic, see William R. Blount, Terry A. Danner, Manuel Vega, and Ira J. Silverman, "The Influence of Substance Use among Adult Female Inmates, *The Journal of*

Drug Issues, Vol. 21, No. 2 (1991): 449-467. In addition, a recent study found that 4 percent of female arrestees in a Massachusetts sample had sex offenses as their highest charge at arrest (Abt Associates, "Draft Statewide Assessment of Need for Treatment in Criminal Justice Populations," Boston: Abt Associates, Inc., 1995, 10). Among female inmates at MCI-Framingham, 4 percent were serving time for sex crimes. (Please note: the terms used in these studies, i.e., "sex offenses" and "sex crimes" should not be confused with sexual assault crimes which generally mean rape or child sexual assault, but are, more correctly, sex for a fee, prostitution, etc.)

²⁵ Abt Associates, Inc., (*Ibid.*, 3) reports that the percentage of arrestees who test positive for at least one illicit substance ranges from 50 percent in the Midwest to over 80 percent in New York and Chicago. (Massachusetts is not one of the states where data are gathered on drug use in arrestees.)

²⁶ In addition, if one of the conditions of probation was "Drug Treatment" or "Must submit urine samples," the case was counted in the "identified as substance abuser" category. Women were also included in this category if a notation of "referred," "recommended" or "attending treatment" related to substance abuse was found in the record.

²⁷ Over one-third of the 217 probation case file records we reviewed that included a notation of a substance abuse problem, did not indicate type of substance. This lack of specificity as to type of substance used is a limitation in the records since the type of services needed or to be recommended may be very different depending on the substance.

²⁸ The Bureau of Justice Statistics (1997) reports that 29 percent of female state prisoners had involvement with alcohol; 73.6 percent reported drug use in the past and 40 percent committed their crimes while under the influence.

²⁹ At the time of the coding and interviews in June of 1998, there was no formal screening process in either court to determine systematically whether a woman had a problem with alcohol and/or drugs. The Risk/Need form does include a section for recording a problem with either alcohol or drugs and a need for treatment and, as Pearl, in her 1998 study of Massachusetts offenders, states, "parole and probation departments routinely use risk/need assessment to determine an individual woman's path through the criminal justice system" (Natalie Pearl, "Use of Community-based Social Services by Women Offenders," *Journal of Offender Rehabilitation*, vol. 26(3/4), 1998: 93). However, (1) these forms are routinely done only in cases where someone is officially placed on probation supervision (and does not include those who are not convicted; have been placed on administrative probation; or those sentenced to or are in jail/prison); and (2) in cases where a form was completed, the judgment that a person does in fact have such a problem is recorded but does not reflect any screening or assessment process. In addition, not all files where a Risk/Need form would be expected included such a form. We worked closely with the Office of the Commissioner of Probation to identify correctly which cases should have had a form and which should not. We would like to thank Marjorie Browne, Deputy Commissioner, and Sandra Adams, Research Director, of the Office of Probation for painstakingly retrieving the Risk/Need forms for cases where a form was expected. We then added information from these forms to our analysis. Careful analysis of the cases of these additional forms revealed only a very small percentage of additional cases with substance abuse noted. Given the fact that, without their physical presence in the case files, it is unlikely that the court personnel would be able to access this information in a way that would influence the disposition of the case, we did not add these forms to our original analysis. Future analysis is planned comparing these two groups.

³⁰ This study covers court activity from 1996 through summer 1998; as stated here, 41 (10.3 percent) of the cases were still open at the time of coding in 1998. Our analysis indicates that a little over half (52.8 percent) received final case disposition within six months of the date of arraignment, 28.2 percent of cases were still being adjudicated after one year or more; 12.1

percent received final disposition in 1998. And, as stated earlier, 41 cases were still open at the time of coding in the summer of 1998.

³¹ We would like to acknowledge that this finding and the odds ratios for dismissal, incarceration, and treatment presented later, differ in degree from those presented in our Draft Report of May 24, 1999. Upon careful review of the multivariate findings as presented in the Draft Report, we realized that we had mistakenly presented the logit coefficients instead of the odds ratios and probability differences as measures of the likelihood of conviction, incarceration and treatment, thus underestimating the effect of substance abuse identification on the dependent variables. We greatly appreciate the work of our advisory panel and statistical consultants in enabling us to correct this error for the final report.

³² Martin (2000) points to data from the Sourcebook of Criminal Justice Statistics (1997, 336, 406) that show convictions on all person crimes other than manslaughter are at lower than expected rates for women. In addition, she suggests that person crimes are always ranked as higher in offense severity but that crimes against known victims are treated less seriously than crimes against strangers. It may be that women are more likely to have committed person crimes against someone they knew which might explain this counterintuitive finding. See, also, U.S. Dept. of Justice, 1999.

³³ In fact, the odds of having her case dismissed are almost 9 times as great for a woman identified as a substance abuser when charged with a crime against a person (which yield an almost 40 percent greater probability of dismissal). In the case of dismissal, we also found that women in court 1 were more likely to have their cases dismissed than in court 2. The tables for the multivariate analysis may be found in the Appendix to this report. (For differences in findings between draft report and final report, see note 30 above.)

³⁴ For a discussion of judicial leniency for women offenders, see, for example, Kathleen Daly and Rebecca Bordt, "Sex Effects and Sentencing: A Review of the Statistical Literature," *Justice Quarterly*, 12 (1995): 143-177. See also the discussion of focal concerns in Steffensmeier, Ulmer and Kramer (1998): 766-770.

³⁵ The tables for the multivariate analysis may be found in the Appendix to this report. (For differences in findings between draft report and final report, see note 30 above.)

³⁶ The tables for the multivariate analysis may be found in the Appendix to this report. (For differences in findings between draft report and final report, see note 30 above.)

³⁷ All of the women had been arrested at some point within the past year and therefore had criminal histories. In order to avoid bias, we conducted a random sample stratified by age and race. The non-incarcerated women were recruited from the programs interviewed as part of the treatment provider component of the study.

³⁸ For defendants who were not convicted on the lead charge, we used the date of case disposition; for those who were convicted, we used the date of initial sentence.

³⁹ For statistical purposes we collapsed the "referred/recommended" and "attending/attended" categories into "other" given that there were very few in the attending/attended" group.

⁴⁰ The tables for the multivariate analysis may be found in the Appendix to this report. (For differences in findings between draft report and final report, see note 30 above.)

⁴¹ The sample was drawn from all DPH funded treatment program and stratified by geographical location, treatment modality, and size. Twenty programs were drawn randomly from the resulting list. We achieved remarkable cooperation from the treatment programs we approached to participate in the treatment provider interviews. Nineteen of the 21 programs to be interviewed (91 percent) agreed to participate and seventeen interviews (81 percent) were completed. (Two programs were non-responsive to our letter and phone calls; we replaced them with programs matched by size, geography and treatment modality.) We interviewed program directors or unit supervisors at each of the selected programs.

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- ⁴² See for example the report by the Governor's Advisory Panel and Mary E. Gilfus, "From Victims to Survivors to Offenders: Women's Routes of Entry and Immersion into Street Crime." *Women & Criminal Justice*, Vol. 4, No. 1 (1992).
- ⁴³ We found that 43.5 percent of those with violations of probation were committed compared to 56.5 percent without violations of probation. And, of those whose final case disposition on the lead charge included incarceration, 84.4 percent had violated the terms of their probation. (The multivariate analysis suggests, however, that it is defaults rather than other violations of probation that contribute specifically to incarceration in the final case outcome.) Logistic regression models that included violations of probation and defaults showed that defaults were significant at $p < .05$ but violations were not significant.
- ⁴⁴ The Criminal Justice System (CJS) designation includes females over 18 admitted to a BSAS-funded program in 1996 who had criminal justice involvement indicated on the DPH MIS Interview-Part I (Admission) form including: source of referral coded as 60-69; client type coded as Sect. 35, prison, probation, or parole; or currently receiving services from DOC, MPB, or OCP (in item 33). While DPH graciously provided us with 1996 and 1997 data, we concentrated our analysis on 1996 for reasons of comparability to our analysis of court data. We would like to thank the following individuals at the Department of Public Health's Bureau of Substance Abuse Services for their support of this project: Mayra Rodriguez-Howard, Theresa Anderson, Barbara Espy, and Elsa Elliot.
- ⁴⁵ Whereas only 7.5 percent of all convicted female offenders (in the two Greater Boston courts included in our sample) were convicted of Operating Under the Influence, 32.0 percent of BSAS admissions in 1996 were to Drunk Driving programs. Because of the different handling of these cases within BSAS programs, these were excluded from our analysis.
- ⁴⁶ This was highly significant at ($p < .001$). Again, all statistics reported here were significant at $p < .05$ or lower.
- ⁴⁷ The Bureau of Substance Abuse Services cautions that discharge data may be less reliable because the forms are completed less consistently.
- ⁴⁸ All of these results perhaps reflect the higher portion of referrals to drunk driving programs for CJS women that limit types of services received. We were limited in our analysis of this particular set of data, which did not exclude drunken driving clients. Further research is necessary to tease out more accurately the correct rates of services received upon discharge.
- ⁴⁹ Of course, since a larger percentage completed treatment, the discrepancy upon discharge may simply reflect that fact.
- ⁵⁰ Greenfeld, Lawrence A., and Stephanie Minor-Harper, "Women in Prison," Bureau of Justice Statistics Special Report, U.S. Department of Justice, March 1991, p. 6. See also, "Drugs and Crime Facts," Bureau of Justice Statistics, 1994, p. 8, 21.
- ⁵¹ See, for example, S. Gabel and R. Shindledecker, "Characteristics of Children whose Parents have been Incarcerated," *Hospital and Community Psychiatry*, Vol. 44, No. 7 (1993): 658; C. Jose-Kampfner, "Michigan Program Makes Children's Visits Meaningful," *Corrections Today*, (August 1991): 132-134; W. H. Sack, J. Seidler, and S. Thomas, "The Children of Imprisoned Parents: A Psychosocial Exploration," *American Journal of Orthopsychiatry*, Vol. 46 (1976): 618-628.

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Appendix

This Appendix provides additional details on certain aspects of the sampling and data collection methods used in the study as well the logistic regression tables referred to in the body of the report.

As stated in the report, the findings presented here are based on our analysis of quantitative and qualitative data gathered from five sources: (1) A random sample of cases of women arraigned during 1996 in two district courts in Greater Boston and followed through June of 1998; (2) Court personnel interviews (including probation officers, judges, and staff members); (3) Interviews with substance using defendants and offenders; (4) Telephone interviews with a state-wide stratified sample of treatment providers; and (5) Secondary analysis of 1996 admission and discharge data from the Bureau of Substance Abuse Services at the Department of Public Health. The coding instruments and interview guides used in this research study are available upon request from the authors.

Quantitative Component

Sampling

We first identified the District Courts in the Greater Boston area which, according to the *Annual Report on the State of Massachusetts Court System*, had the largest number of complaints issued in 1996. We then examined these courts for the number of female offenders arraigned in 1996, the number of female probation cases, the percentage of these cases that were identified as being drug offenders and the percent of cases that were identified as having drug problems.* Two courts were selected as having comparable offender characteristics and large enough volume of cases to enable generating a sample of sufficient size for meaningful analysis. The sampling frame for each of the selected courts was over 1,400 female offender cases arraigned in 1996. To protect confidentiality, we have designated these courts as “Court 1” and “Court 2.”

The data collection procedure for the quantitative component was as follows: we first generated a random sample of 400 from all women arraigned in the two district courts under study. The oversample was then created by continuing to select cases randomly from the list of female arraignments and then including only those offenders who were both convicted on the lead charge and identified in the case file as a substance abuser until we had sufficient numbers of women in each cell of analysis. Table 5 shows each source of the total sample (N=472).

In this way we were able to generate a random sample of women defendants (N=400) as well as a sample of convicted offenders (N=306) that included enough

* We thank the Research and Planning Department of the Office of the Commissioner of Probation for providing us with these data.

women sentenced to incarceration so as to detect any differences that were statistically significant (i.e., at least 30 cases of convicted offenders who were incarcerated to compare with the offenders who were convicted but not incarcerated).

Table 5: Sample Sources

	Source		Total
	Random Sample	Oversample	
Convicted			306
Identified as substance abuser	127	72	199
Not identified as substance abuser	107	0	107
Not Convicted			166
Identified as substance abuser	18	0	18
Not Identified as substance abuser	148	0	148
Total Convicted and Not Convicted	400	72	472

Although the oversample of convicted substance abusers (N=72) was drawn from the same random list of probation case file (PCF) numbers of women arraigned in 1996, there were a number of variables where there was a significant difference between the oversample and the random sample: the mean number of charges in the prior record was larger in the oversample (18.4 vs. 9.5; $p < .01$); the mean number of prior convictions was also larger (13.0 vs. 5.9; $p < .01$); the age at first adult arraignment was slightly younger (23.2 vs. 25.8; $p < .05$); and the seriousness level of the lead charge was somewhat less (2.3 vs. 2.7; $p < .01$). There were no significant differences between the two groups on the number of 1996 charges or convictions, the number of defaults prior to 1996, the age at date of lead charge arraignment, the seriousness level of the most serious conviction prior to 1996, or either the number of charges or seriousness level of charges in 1997/98. Given the prior discussion of the relationship between these factors and substance abuse identification, these differences would not be unexpected.

While, as indicated in the report, hypothesis testing studies generally employ larger data sets, this was an exploratory study with a sample size sufficiently large to begin the process of hypothesis development and to provide direction for future research. The sample size is, from a methodological standpoint, quite adequate for an exploratory study such as this. Because it is a scientifically drawn stratified random sample, the differences between groups (women identified as substance abusers compared to those not identified) have a statistical probability of falling within the 95th percent confidence interval (and in many cases, within the 99th percent confidence interval).*

* The use of a sample of 200 cases from each court (N=400) provides: (1) a statistical power of .90 (this is the probability of obtaining a significant result – .70 to .85 is considered acceptable for causal studies); (2) a critical effect size of .25 (that is the minimal difference necessary in the data to be detected); and (3) a significance level of .05 for a two-tailed test (the general standard in social science research). Using the entire 400 case data set, as we did, sample analysis would permit a statistical power of .95 with a critical effect size of .20.

Data Collection Methods

The Case File Data Collection Instrument gathered data on demographic characteristics and the offender's criminal history. Data were gathered for the target year 1996, prior to 1996 (criminal history) and post 1996 (case activity, disposition, sentence and final outcome). The year 1996 was chosen to allow for tracking the disposition of cases that may take several years to reach disposition. This study covers court activity from 1996 through summer 1998; we found that 41 (10.3 percent) of the cases were still open at the time of coding in 1998. Our analysis indicates that a little over half (52.8 percent) received final case disposition within six months of the date of arraignment, 28.2 percent of cases were still being adjudicated after one year or more; 12.1 percent received final disposition in 1998. And, as stated earlier, 41 cases were still open at the time of coding in the summer of 1998.

Charges were counted by level of crime, type of offense, violent/non-violent; in addition, the charges were counted by disposition: probation, commitment (jail/prison), dismissal, defaults, etc. We also selected the most serious offense in the first docket in the target year that led to a conviction as the "1996 lead charge." (If there was no conviction, the most serious offense was chosen.) Complete information about case activity (dates and types of hearings, etc.) and final disposition for this lead charge were recorded.

We coded any notation of substance abuse that occurred in the five years prior to the date of the 1996 lead charge. Case file materials that were examined included: pretrial intake/indigency forms, court notes, conditions of probation, supervision sheets, mental health referral forms, clinic reports, risk/need assessment forms, and other materials that were available. The type of substance used was noted as well as whether the offender was referred to a clinic, any type of drug treatment and whether she refused, attended, and/or completed treatment.

Data collected from the Pretrial Intake/Indigency Reports included additional demographic data (including income and employment status) as well as specifics of substance use, if any were noted. Court notes, probation supervision sheets, mental health referral forms, and clinic reports were coded in more detail for whether substance use was noted and what the court's and offender's respective responses were, including referrals to treatment, drug court, section 35, etc. For cases that led to probation, the Conditions of Probation forms were examined as well and coded for specific court responses to substance use.

Finally, when an Adult Risk/Need Assessment Form was available for the lead charge, data were coded for prior record, age at first charge, employment, and risk factors including family and substance use issues. Educational attainment was gathered from the district court assessment form and/or from other materials in the file. In cases where data were not available in the case files, the variable was coded as missing.

Qualitative Component

The qualitative component of the study was intended to provide information from a cross-section of court personnel, treatment providers, and female defendants/offenders. Interviewees included a random sample of court personnel (N=13, stratified by race and gender in each of the two courts); treatment providers (N=21, stratified by treatment modality and geographical area); and defendants/offenders (N=16, incarcerated and non-incarcerated, stratified by age and race). The non-incarcerated women were recruited from the programs interviewed as part of the treatment provider component of the study. We make no claim, of course, that the findings based on the relatively small number of interviews are generalizable to other courts in Massachusetts. This study is exploratory in nature and the experiences described in the qualitative interviews do provide some insight into the experiences of key participants in the criminal justice and public health systems.

Court Personnel Interviews

The goal of the interviews conducted with court personnel was to understand the mechanisms in place to identify which female offenders have substance use problems and to determine the resources available to deal with them. These interviews gave court personnel from the two district courts an opportunity to share their perceptions about the needs of and recommendations for women with substance abuse problems in the criminal justice system.

One judge and four probation officers were selected from each of the two district courts participating in the probation case file review described above. The probation officers included the chief probation officer of each court plus three others chosen randomly from lists stratified by race and gender so as to gather the perspectives of a representative group of probation officers. While, the small number of interviewees do not permit detailed statistical analysis, the interviews serve as case studies to explore the procedures the courts use in screening for substance abuse; how they identify and/or estimate the number of substance using female offenders who come through their courts; the most effective ways the courts deal with this problem; and the issues that confront them in their work with this population.

The methodology of the court personnel interviews was qualitative, using a semi-structured interview guide. Topics covered in the interviews included: how substance use is noticed/noted in the courts; procedures and uses of the Risk/Need Assessment Form; resources available within and outside of the court for substance abusing female offenders; the role of probation officers in influencing disposition and recommendations for treatment; strengths and weaknesses in the court system for women with substance use problems; and recommendations for improving services. The court personnel were also asked to estimate the number of arraignments in an average month in their court, the percentage of these that are women, and the percentage who have substance use problems. Detailed process notes were taken to record the interviews; the content was analyzed qualitatively for major themes. While basic data were collected on the court

personnel interviewed (i.e., position, years in position, age, sex, and race/ethnicity), no identifying information is revealed about the interviewees.

Treatment Provider Interviews

The goal of the treatment provider interviews was to explore the treatment options available and/or needed to serve female offenders with substance use problems. In order to gain a *statewide* picture of the perspectives of treatment providers as to the options, obstacles, and needs for this population, the methodology chosen for this component of the project was telephone interviews with a sample of treatment providers.

The sampling frame for the treatment provider interviews was drawn from the list of state-funded treatment programs serving women in Massachusetts. Data on the number of women served, the percentage of women with involvement in the criminal justice system, geographical area of the state, and type of service (modality of treatment, coed vs. women only, etc.) were gathered. In order to be sure we would be interviewing staff from programs with some experience dealing with women who had been involved in the criminal justice system, we first ranked programs on a “most experienced-least experienced” continuum and then created a list of those programs that were at the median and above in terms of experience. Then, stratifying by modality and geographical area, we randomly selected 20 treatment programs to be interviewed: four each of the following modalities – outpatient, day treatment, residential, and detoxification. Two each were selected from methadone and specialized women’s programs. An additional interview with a coed specialized criminal justice program was added to capture the perspective of this type of modality. The total size of the sample was therefore 21.

Due to the way the sample was generated, the results should not be interpreted as representative of all treatment program perspectives but rather as a qualitative picture of the perspectives of a sample of programs that (1) receive state funds; (2) offer treatment from a variety of modalities; (3) reflect a statewide distribution; and (4) have average to above average levels of experience working with substance using female offenders.

The procedure of the treatment provider interviews was as follows: A letter explaining the study was sent; a followup phone call verified the type of modality, identified the appropriate clinical staff person to be interviewed, and set an appointment for the interview. A Treatment Provider Interview Guide was developed. All interviews were completely voluntary; only after responding “yes” to the question “Do I have your permission to conduct this interview?” did the interviewer proceed.

The interview, which lasted approximately one-half hour covered the following topics: annual capacity (especially for women); length of waiting list, if any; eligibility criteria (including restrictions); percentage of female clients who have criminal justice involvement; services offered; path to admission for female offenders; impact of criminal justice status and/or children on admission; and interviewee’s perspective on the needs of this population.

Detailed notes were taken during the course of each interview; these were transcribed into a computer form shortly thereafter and analyzed for content. All information collected via these interviews is kept confidential and no identifying details are being revealed.

Interviews with Female Offenders

Given that one of the project goals was to track the court activity female offenders go through from point of arraignment to case disposition, we decided to conduct interviews with two sub-groups of female offenders. The first group includes *non-incarcerated* female offenders who had had a substance use problem and were in treatment. The second group consists of *incarcerated* female offenders who had had a substance use problem. Sixteen women were interviewed face-to-face: ten incarcerated and six non-incarcerated women.

A mechanism was developed to generate the two sub-groups. For non-incarcerated women, we recruited volunteers from the treatment programs that made up the sample of treatment provider interviews described above. The final question in those interviews was whether the program would be willing to recruit volunteers from among their current clients. The criteria for inclusion were that the person would have entered their program within the past month and that she would have some criminal justice involvement in her recent past. While she could have been incarcerated at some point in the past, the current treatment should not have been the result of a referral from the most recent arrest. Two women are selected from one program in each of four modalities: day treatment, outpatient, residential, and methadone (detox was excluded). While some attempt was made to be representative by geography, we decided to conduct offender interviews from programs located within one hour of each of the two district courts in the greater Boston area that were included in the probation case file component of the study.

Incarcerated women were recruited from Framingham State Prison in cooperation with the Department of Correction. Women who committed during January 1998 were identified, screened for race, age, and type of crime (non-violent), and invited to volunteer.

A screening process was instituted for both the incarcerated and non-incarcerated offenders to assure that the sample was representative of the age and racial breakdown of women in prison and in treatment. Considerable effort was expended to assure that the rights of the offenders participating in these interviews were protected. For a complete description of these efforts and protections please refer to the Institutional Review Board application (available upon request) and the approval letter from said board. The topics covered in these interviews include the following: most recent arrest experience; whether court personnel were aware she had a substance use problem; how they learned about the problem and what their response was to it; the disposition of the case; current services being received for substance use; what has been most difficult and what has been most helpful in trying to remain abstinent; and the ways the criminal justice system had been helpful or not helpful in trying to recover from a substance use problem. The interview ends with collecting (non-identifying) demographic data

including marital status, number and ages of children, and from what types of treatment programs she had received services.

Logistic Regression Results: Main Effects for Key Variables

Tables 6-9 are included here for those who have a specialized interest in details of the multivariate findings. The calculation of probabilities from odds ratios is based on Hanushek and Jackson's (1977) formula: $(\text{odds}/\text{odds} + 1) - .50$. For a discussion, see Steffensmeier, Ulmer and Kramer (1998, p. 776).

Table 6: Main Effects for Age, Race, Court, Offense, Prior Record, and Substance Abuse Identification – Logit Model of Conviction on Lead Charge

Variable	Odds	(Logit)	[Probability Diff.]
Age < 21	1.20	(.18)	[+4.5%]
Age: 30-49	.80	(-.23)	[-5.6%]
Age: 50+	.46	(-.78)	[-18.5%]
Race: Non-white	.97	(-.03)	[-0.8%]
Court: 1	.57	(-.56)	[-13.7%]
Offense severity**	.67	(-.41)	[-9.9%]
Prior record: Minor	.95	(-.05)	[+1.3%]
Prior record: Moderate	1.67	(.52)	[+12.5%]
Prior record: Serious	3.50	(1.25)	[+27.8%]
Offense type: Drug	.92	(-.09)	[-2.1%]
Offense type: Person****	.16	(-1.80)	[-36.2%]
Offense type: Other	1.09	(.09)	[+2.9%]
Substance abuser****	14.12	(2.65)	[+43.4%]
Constant**	--	(1.46)	
N		400	
-2 log likelihood		347.78	
Chi square****		134.34	

*p<.05; **p<.01; ***p<.001; ****p<.0001

Note: Random sample (N=400). Reference categories for Age: 21-29; Race: White; Court: 2; Prior record: None; Offense type: Property. Note: we also tested the interaction of race*court in this and subsequent models and found no significant effect.

**Table 7: Main Effects for Age, Race, Court, Offense, Prior Record, and Substance Abuse Identification –
Logit Model of Dismissal on Lead Charge**

Variable	Odds	(Logit)	Probability Diff.
Age <21	.72	(-.32)	[-8.1%]
Age: 30-49	.76	(-.27)	[-6.8%]
Age: 50+	2.66	(.98)	[+22.7%]
Race: Non-white	.89	(-.11)	[-2.9%]
Court: 1*	1.94	(.66)	[+16.0%]
Offense severity*	1.44	(.37)	[+9.0%]
Prior record: Minor	.76	(-.27)	[-6.8%]
Prior record: Moderate	.61	(-.49)	[-12.1%]
Prior record: Serious	.37	(-1.0)	[-23.0%]
Offense type: Drug	1.10	(.09)	[+2.4%]
Offense type: Person****	8.91	(2.19)	[+39.9%]
Offense type: Other	1.44	(.36)	[+9.0%]
Substance abuser****	.10	(-2.31)	[-41.0%]
Constant		(-1.75)	
N		400	
-2 log likelihood		307.47	
Chi square***		112.94	

*p<.05; **p<.01; ***p<.001

Note: Random sample (N=400). Reference categories for Age: 21-29;
Race: White; Court: 2; Prior record: None; Offense type: Property.

Table 8: Main Effects for Age, Race, Court, Offense, Prior Record, Defaults, and Substance Abuse – Logit Model of Incarceration as Part of Initial Sentence

Variable	Initial Sentence		
	Odds	(Logit)	[Prob. Diff.]
Age<21	.25	(-1.39)	[-30.0%]
Age 30-49	.53	(-.64)	[-15.4%]
Age 50+	.001	(-6.55)	[-49.9%]
Race: Non-white	1.80	(.59)	[+14.3%]
Court: 1	.90	(-.11)	[-2.6%]
Offense severity	1.33	(.28)	[+7.1%]
Prior record: Minor	2.01	(.70)	[+16.8%]
Prior record: Moderate	1.61	(.48)	[+11.7%]
Prior record: Serious	1.12	(.11)	[+2.8%]
Offense type: Drug	2.65	(.97)	[+22.6%]
Offense type: Person	1.25	(.22)	[+5.6%]
Offense type: Other	2.93	(1.07)	[+24.6%]
Defaults*	1.03	(.03)	[+.7%]
Prior incarceration**	5.06	(1.62)	[+33.5%]
Substance abuser*	17.08	(2.84)	[+44.5%]
Constant****		(-6.83)	
N		306	
-2 log likelihood		145.94	
Chi-square****		55.69	

*p<.05; **p<.01; ***p<.001

Note: Convicted offenders (N=306) were drawn from combined random sample (N=400) plus a subsample of convicted substance abusers (N=72). Reference categories for Age: 21-29; Race: White; Court: 2; Prior Record: None; Offense type: Property.

Table 9: Main Effects for Age, Race, Court, Offense, and Prior Record – Logit Model of Court Ordered Treatment

Variable	Odds	(Logit)	[Probability Diff.]
Age <21	.46	(-.78)	18.49
Age 30-49	1.91	(.65)	15.64
Age 50+	.22	(-1.53)	-31.97
Race: Non-white	.84	(-.18)	-4.35
Court: 1	1.29	(.25)	6.33
Offense severity	1.31	(.27)	6.71
Prior record: Minor	.69	(-.37)	-9.17
Prior record: Moderate	.69	(-.37)	-9.17
Prior record: Serious*	.32	(-1.14)	-25.76
Offense type: Drug***	8.17	(2.10)	39.09
Offense type: Person	2.37	(.86)	20.33
Offense type: Other*	3.75	(1.32)	28.95
Constant*		(-2.34)	
N		191	
-2 log likelihood		212.31	
Chi square**		30.806	


*p<.05; **p<.01; ***p<.001

Note: Convicted offenders identified as substance users (N=191) included the convicted offenders (N=119) drawn from the random sample (N=400) plus a subsample of convicted substance users (N=72). (Convicted Offenders include those identified as substance abusers within 5 Years Prior to date of lead charge arraignment and date of initial sentence)Reference categories for Age: 21-29; Race: White; Court: 2; Prior record: None; Offense type: Property crime.

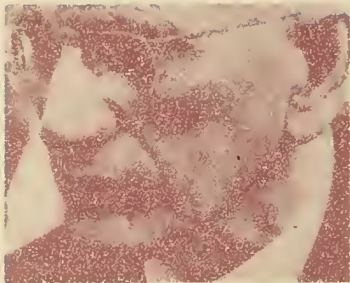
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